TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 339.

WILL JONES, PLAINTIFF IN ERROR,

vs.

MARGUERITE JONES AND HER HUSBAND, ALBERT JONES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED SEPTEMBER 4, 1913.

(23,343)

(23,349)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 9, 1914.

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1 In the Supreme Court of the State of Tennessee, at Jackson, April Term, 1912.

STATE OF TENNESSEE,
Shelby County:

Be it remembered, That at a Term of the Chancery Court of Shelby County, State aforesaid, begun and held at the Court House in the City of Memphis, in and for said County, on Monday, the 3rd day of October, 1910, the same being the first Monday in October 1910, present and presiding the Honorable F. H. Heiskell, Chancellor of Part One of said court, the following proceedings were had, towit:

Original Bill.

Filed June 13/10.

To the Hon. the Chancellors holding the Chancery Court at Memphis, Shelby County, Tennessee:

R. D. No. 16175.

MARGUERITE JONES AND HUSBAND, ALBERT JONES, Residents of Shelby County, Tenn.,

vs.

WILL JONES, Resident of Same County.

Complainants respectfully show to the Court:

I.

That on the 8th day of Feb., 1909, they filed their original bill in this court against the defendant Will Jones, alleging that plaintiff Margurite Jones, was the widow of John Jones, and that her husband died in 1899, seized and possessed of 87 acres of land in the *end* civil district of Shelby County, Tenn., and that she
2 contributed to the purchase of said tract of land, and that the deed was to have been made jointly to both of them, and claiming that by reason of the premises she was entitled to all the land as a separate estate, and praying to have the same decreed to her.

II.

The defendant answered said bill admitting that she was the widow of said John Jones, but claimed to be the son and heir at law of her deceased husband, and claiming an interest in said land.

Complainant then discovered for the first time that the defendant had procured fraudulent conveyances to the land involved from different persons claiming to be brothers and sisters of complainant husband, and had put these deeds on record after her bill was

filed, but failed to mention the facts in his answer. Complainant then filed her amended and supplemental bill to which the defendant filed his answer which was accompanied by copies of these fraudulent deeds. And thereupon proof having been taken in part, complainant made application for continuance to enable her to take further proof to show that the deeds relied on by defendant, were procured by fraud and were therefore void since defendant relied upon them alone, and introduced no other proof; this motion was refused and the cause was heard at the last term of this court;

3 and a decree pronounced adjudged that complainant was the widow of John Jones, deceased, and that she was not entitled to have the property involved, declared she was separate estate, that she was entitled to dower and homestead in said lands and nothing else and John W. Craddock and B. L. Hermon and the County Surveyor were appointed commissioners to set aside the same.

All of which matters will more fully appear by examination of the entire pleadings, a copy of which is hereto attached as exhibit A to the bill and made part herein, but need not be copied.

III.

1st. Complainant- show to your Honor, that they are grieved by said decree, and ought not be bound thereby; and that said decree is erroneous and ought to be reviewed and set aside for the following errors therein: The defendant Will Jones is not the son and heir at law of her deceased husband, John Jones, and is not related to him in any way and that the deeds held by him to the land involved, are fraudulent and without consideration. That the parties who executed them, were induced to do so through fraud and false representations.

And that they had no inheritable blood from her husband; had no interest in said property at the time; that the deeds conveyed no title—that her husband was an ex-slave; and the alleged sisters and brothers of his who undertook to convey title to the land were ex-slaves, and that the said husband, John Jones, had no transmissable blood, and that decree is in violation of the Act of the

4 General Assembly of Tennessee, being chapter 40, of the Acts of 1865-66, and being section 4179, of Shannon's Compilation that said Will Jones defendant, is not entitled to any interest in said land, but that, complainant Margurite Jones, is the owner in fee simple of the same, having inherited same as the only heir at law of her deceased husband John Jones, and the same should have been decreed to her instead of only hom-stead and dower.

2nd. Complainants aver, that they were slaves before the war; that they are both about 70 years of age, old and infirm, bent with age.

That they are ignorant, can neither read nor write, and live about 25 miles from the City of Memphis, in the country on the farm about 4 miles from any Rail Road or town.

That the defendant Will Jones is much younger than they are,

is intellegant and is a shrewd sharp man healthy and strong and active, and educated.

That since said decree and within the last 30 days, comp-ainants have discovered the fact to be that the defendant took no title by the deeds relied upon by him, from her deceased husband alleged brothers and sisters; that her deceased husband had no transmis-able blood, and that his alleged brothers and sisters who undertook to convey to the defendant, they have since discovered that they are not the brothers and sisters of her deceased husband, and took no interest in his said estate.

Defendant Will Jones took no proof as to this fact, and they were deceived into acquiescence in this claim of their relation to her said husband, deceased, this being the only claim upon which defendant Will Jones basis his title or right to the property, it was a fraud upon their rights.

Complainants endeavored to have said cause continued in order that they might further proof as to the validity of these deeds, but defendant would not consent to it, but hurried the case through, which was to prevent them making investigation into his claim.

Complainants did not know of these new facts at the time said decree was pronounced, and could not by reasonable diligence have known them, This is especially true, because of their ignorance, infirmity and old age, being so far in the country and being unable to travel the distance to town to confer with their counsel in the case, and these new matters complainants are advised, entitled them to have said decree wholly reviewed and set aside and said decreed reversed for fraud and for the error apparent in the decree.

IV.

Complainants show to the Court:

That, the defendant is attempting to take possession of a portion of the land herein described in the original bill, which is valued at $5,000.00 dollars, and is setting up claim to it, and has procured from certain persons, certain fraudulent deeds to said property which he has placed on record since the filing of her original bill in this cause, through which deeds he claims title to said land, and is seeking to take possession of a portion of it, and deprive her of the use and benefit of the same.

V.

That said deeds are void and were fraudulently obtained, and convey no title and are a cloud upon her title.

That she is the owner in fee simple of said lands, having inherited the same under the law of Tennessee, as the only heir at law of her deceased husband, John Jones, who was a slave before the war, and who died seized and possessed of said land in 1899.

That she has been in possession of same ever since. That the persons who undertook to convey to defendant Will Jones, were not the legal heirs of her husband and had no interest in said property that he- husband was a slave and had no transmissable blood, and the alleged brothers and sisters of his, making the deeds, could

not even if they were his, brothers and sisters give any title to said property.

That when she married her deceased husband, he had nothing, she had money which was put into this property when it was purchased, and they worked together and made the money to finish paying for it; she working in the field, and shortly after they finished paying for it he died intestate.

7 VI.

That she has since his death intermarried with Albert Jones, who joins her in this suit.

That she is quite old and infirm, can neither read nor write, lives long ways in the country, is ignorant and knows nothing of law and law suits, and when they filed their original bill in this cause, they were ignorant of their rights and mistaken in their remedy; and having no one to advise them, were dependent on what ever was told them.

That through the fraud of the defendant Will Jones, to whom she has mainly looked for advice since the death of her husband John Jones, and who until recently has pretended to be her friend, has sought to deprive her of her property, and secure title in himself.

Complainants aver that John W. Craddock, B. L. Harmon and the County Surveyor appointed by the court as commissioners will, unless restrained by this Honorable Court proceed to set aside dower and homestead in said land.

That Will Jones, defendant will, unless restrained by this honorable court, attempt to take possession of said land and otherwise interfer- with her possession.

That they own no other property save the 87 acres herein involved.

The premises considered complainant- pray:

That subpœna and a copy of this bill *and* executed on the
8 defendant, Will Jones requiring him to appear and answer this bill, but not under oath, his answer on oath being expressly waived.

That said decree may be reviewed, reversed and set aside to the extent of the errors herein complained of.

1st. As a bill of review for the error apparent in the decree of the chancery court, of Shelby County, as affirmed by the Supreme Court in the case of Margurite and Albert Jones.

2nd. As an original bill in the nature of a bill of review to impeach the decree in the same suit, and to set aside the decree for fraud. That the deeds to defendant Will Jones be declared a cloud on her title and cancelled as such cloud.

That complainants may have such other further general and special relief as they may be entitled to at the hearing.

MARGURITE JONES &
ALBERT JONES.
B. F. BOOTH, *Att'y.*

B. F. BOOTH,
H. R. SADDLER,
Solicitors.

STATE OF TENNESSEE,
Shelby County:

We, Albert Jones and Margurite Jones the complainants in the foregoing bill do solemnly swear that the facts therein stated are true to the best of our knowledge and belief and on our own personal knowledge and belief, accept those made on information
9 and belief and those we believe to be true.

His
ALBERT x JONES.
mark.

Her
MARGURITE x JONES.
mark.

Subscribed and sworn to before me this June 13/10.
[SEAL.] J. H. MORRIS, *N. P.*

EXHIBIT "A" TO BILL.

Original Bill.

Your complainant states to your Honor that she, Margurite Jones is the lawful widow of John Jones who died intestate some years ago. At his death the record title to the following property was in the said John Jones as follows:

The south 87 acres of Lot No. 1 in subdivision of Isaac L. Bolton estate, in 2nd Civil district of Shelby County, Tennessee, Range 7, section 5—part of Rob't Goodloe's 3000 acre grant No. 91.

The purchase price for the said above property was $2,000.00 and the first payment made on the said property amounting to about six hundred dollars was furnished by said complainant Margurite Jones to her said husband John Jones out of her own individual funds which she derived from her former husband's death, or life insurance. The balance of the purchase money on the said land was payable in deffer-ed notes and this complainant's earnings made up the greater part of the said balance — purchase notes.
10 It was understood between this complainant and her said deceased husband John Jones that the title was to be recorded in the name of the complainant, but for some reason unknown to complainant her said husband had the deed made out in his own name, this was a mistake as it should have been made in the name of the complainant according to their understanding and agreement, in fact, it was complainant's property and purchase and it was unknown to complainant at the time that the title was taken in the name of her said husband, and it was then and until a very recent date her impression that the title was made in her name individually because her individual and separate estate was put into the property with the understanding that the title should be in her name separately. And this complainant paid for the property with her individual earnings and this property is her separare estate, and her husband was in fact her trustee in so far as the title was

concerned. Your complainant further states that her said property rights are now constantly being interfered with by one Will Jones, and defendant to this suit, and on the — day of January, 1900 the said Will Jones moved on or attempted to, move on her said premises against her consent and without any authority whatever and threatens to use the said property for his own use and benefit and will do so unless restrained by your Honor, as this complainant is informed and believes that he is attempting to set up some claim to her said property, and this is her first application for an injunction in this case and for the relief herein sought. The rights of
11 homestead and dower have never been determined for this complainant in whatever claims her husband had in said lands, and if it is necessary, complainant will ask their determination herein.

Complainant state- that she has been in possession of the said lands uninterruptedly now for more than twenty years, and since the death of her said husband, it has con-inued to be her home.

The defendant has tried to set up a claim to her said property in a magistrate's court several days ago, but just what sort of claim he attempts to make, she is not advised however, she is informed that he is claiming twenty acres of the same, and will attempt to cultivate the said twenty acres this ensuing year, unless he is restrained by your Honor. Your complainant and the defendant both reside in Shelby County, Tennessee.

Wherefore complainant prays that the person named herein as defendant, be made such and that all proper process issue as at law to compel the defendant to appear at the earliest rule day hereof, and plead, answer or demuer to this bill, but his answer on oath is waived. That a temporary injunction issue to restrain the defendant from coming on her said premises, or in any way molesting this complainant in respect to the same, or from atempting to dispose of the same, or assert any ownership over said land, and on final hearing she prays that a decree be made herein declaring the conveyance to the said John Jones as a conveyance in trust, and setting up her separate *s*tate in the same, or in any event setting
12 the said lands aside for her own proper homestead and dower, and perpetually enjoining the said defendant from interferring with the complainant in respect to the same.

She further prays that during the progress of this cause, your Honor make all such further orders and decrees as shall or may become necessary to properly carry out the relief to which she may be entitled; and that on final hearing this complainant be granted all further and general relief, such as your honor deems fit in the premises.

Order Allowing Complainants to File Supplemental Bill.

In this cause upon motion of complainants for leave to file their supplemental bill so as to set forth certain alleged fraudulent deeds from Arthur Jones and —— Jones, alleged brothers of complainant's deceased husband to Will Jones, and so as to pray for the concellation of said deeds upon the grounds of fraud:

It is hereby ordered, adjudged and decreed by the court that the complainants may filed said supplemental bill herein for the reasons set forth, and for their general relief, ten days being allowed to file said supplemental bill.

Answer of Will Jones.

The defendant, Will Jones, would most respectfully state and show to your Honor, in answer to the aforesaid bill of complaint filed against him as follows:

13 That his father, John Jones, died on or about the — day of July, 1899, seized and possessed of the said 87 acres of land described in complainant's bill as stated therein and he had to pay a purchase price for said land amounting to about the sum of $2,000 or more.

That the defendant denies most emphatically the statement in complainant's bill to the effect that Margurite Jones, one of the complainants therein, paid $600 of the purchase money for said tract of land. Said statement to the effect that Margurite Jones furnished her husband, John Jones, out of her individual funds from life insurance, or from any other source, $600 to be paid on said land in making the purchase thereof, is absolutely untrue and without any foundation in fact.

It is true that there was a balance after the first payment, which was evidenced by promissory notes made and executed by John Jones, defendant's father, which said notes were afterwards taken up and paid off by said John Jones during his life time in transactions with and through the firm of Dillard and Coffin, in the City of Memphis, Shelby County, Tennessee, but it is not true that any part of said purchase money notes were paid by the complainant, Margurite Jones, nor did she furnish any sum or sums to be used in the payment of the notes for said land. On the contrary John Jones, her husband, long before his death, paid off said indebtedness and received a perfect deed to said land with his own

14 resources, which he was enabled to have and use through the industry of this defendant, Will Jones, who helped him in making the crop that furnished the means with which to pay off the several money notes.

That the defendant also denies the truth of the statement that it was ever understood between the complainant Margurite Jones, and his deceased father, her husband, John Jones, that the title was to be recorded in the name of *the* Margurite Jones, for any *p*reason at all. That said deed was made just as it was intended, and just as his father, John Jones would have it at the time, and there was no such agreement as stated by the complainant, Margurite Jones.

The defendant also denies that there was any mistake in making said deed to the said John Jones in his name, but that the deed was made in perfect accord with the will, wish and desire of John Jones, because he had furnished the means with his own labor and that of his own son, Will Jones, with which the purchase of this land

was made at the time. And the complainant furnished none of the means with which to pay for this land.

That the defendant, Will Jones, would further show that whatever may have been the impression made upon the mind of the complainant, Margurite Jones at that time, that it seems quite strange that she would have slept on her rights, if she has any, for more than 20 years, when the deed to his father, John Jones, was made and of record in the Register's office of Shelby County, Tennessee, where it could be inspected at any moment, and its meaning and purport ascertained either by her directly or through
15 some assistance which she might have procured long ago.

And the defendant, Will Jones, denies that the title should ever be made in the complainant Margurite Jones individually because of any means that she was able to furnish for the reason that it is true as to her that she had no individual separate estate at that time to purchase this property or with which to purchase this real estate, but on the contrary she was hard pressed, and so was his father for a considerable time after the marriage of the complainant Margurite Jones, to him, and that not until the defendant, Will Jones, became old enough to assist his father in making the crop, was he able to procure the means with which to purchase this real estate.

That the defendant, Will Jones, most emphatically denies that the complainant, Margurite Jones paid for the property with her individual earnings, and denies, therefore, that it is her separate estate, and that she has any right other than she may obtain by virtue of the fact that she is the wife of his father, John Jones, who died seized and possessed of this property.

The defendant further denies that he has interferred with any right, title or interest of the complainant, Margurite Jones, in this particular tract of land, but on the contrary would state that on the — day of January, 1909, while he was in peaceable possession of some 20 acres of said land which was agreed by the said Margurite Jones, he should occupy and use, and which he had been using ever since two years before his father died; the complainant,
16 Margurite Jones, had the defendant, Will Jones arrested and carried before a Magistrate in the Second Civil District of this county, and while there agreed that all controversy should be stopped and dismissed her proceedings before the magistrate, and all returned home with the understanding that *the* Will Jones, the defendant, could go ahead as he had heretofore, and have peaceable possession of said 20 acres of land. But soon after the return home the complainant conceived the idea, filing a bill of injunction against the defendant, Will Jones, and thereupon did file this bill, to which this defendant makes this answer.

The defendant denies that he has in any way interfered with any right that the complainant has in said tract of land, and now insists that he cannot rightfully be enjoined from the peaceful enjoyment of at least two thirds of said tract of land, even during the life time of Margurite Jones, the complainant, his step-mother, and after her death that said property will descend to him, and that the

legal title to said property is now in the defendant's hand, and that the widow of his deceased father only, has a life estate of homestead and dower interest in said property which has never been set apart to her by law.

The defendant further states that it is true that the complainant, Margurite Jones, has been in possession of said lands in part, that is to say about 40 acres of said land for quite awhile as the widow and dowress of his deceased father, John Jones, and that
17 she has agreed, consented to and allowed him to remain on 20 acres of said tract of land ever since his father died, and up until January 1909, without any objection.

That under the law, as the defendant is informed and believes, he is entitled to a homestead in his own right at present, and having had the understanding that he should occupy only 20 acres, he was doing a greater part by her than in law she was entitled to, but he was willing to remain in the situation and let her have 40 acres until she has shown the disposition to oust him out entirely, and now defendant insists that he should have his legal right, and be given possession of all the land that he is entitled to, as the only heir of his deceased father, John Jones.

That the defendant had arranged to have cultivated this 20 acres of land which had been given him by his father 20 years before his death, and on which his step-mother had allowed him to live up until January, 1909, and had his things in the house, and all necessary equipment to have the 20 acres cultivated, and since the filing of this bill by the complainant, Margurite Jones and her husband, Albert Jones, he has been deprived of attending to and looking after and arranging for the cultivation of this 20 acres of land which he is entitled to have possession of and use and cultivate for his own benefit, and in thus being prevented from looking after it, it is highly probable that if action is not immediately taken by the Court
18 so as to restore him to his rights, or increase the bond on the part of the complainants for the damages done to him, great injury will be done to him, and — consequence the land may have to lay out and remain uncultivated for this present year, 1909.

The defendant here and now denies specifically and definitely every allegation made in said bill as fully and definitely as if positively pointed out, and asks positive proof as to every statement made therein.

He further avers that the fact is the complainant, Margurite Jones, at the time she married his father in 1873, had no property and was utterly unable to furnish any means with which to buy any real estate or any other kind of property at that time, and that all of her statement about furnishing means is without foundation in fact, as he was utterly poor and had to borrow money with which to make a trip or move from the City of Memphis, out into the country where his father lived at the time of the marriage, and this marriage occurred at least one year after the death of her former husband, from whom she claims to have obtained some insurance money.

The defendant further avers that he was the main instrument through whom his father was able to make the necessary money

with which to pay the purchase price of this 87 acres of land which this complainant now seeks to take from him and use as her own.

That the defendant has been industrious has worked hard, both before his majority and since, and that his father has said often that it was upon him that he relied as the means and main source through whom he expected to procure the necessary means with which to pay for this land which he owned.

The defendant, now having fully answered all thing- material for him to answer in said bill, now asks that he be dismissed; and that the injunction be dissolved, and the suit be dismissed with his reasonable costs.

B. F. BOOTH,
H. R. SADDLER, *Sol's.*

Supplemental Bill.

Complain-t, Margurite Jones for her supplemental bill filed herein by leave of the court hereinbefore granted says:

That since the filing of her original bill, and since the filing of his answer thereto pending this suit, the defendant Will Jones, has fraudulently attempted to procure a record title to her property, which is the same property involved in this lawsuit, and described in her said original bill; and that one Arthur Jones, and Pony Jones who are believed to be residents of the State of Mississippi, and non-residents of Shelby County, and of the State of Tennessee, and Pony Jones, Jeff Newman and Francis Newman, John and Joanna Cole, are and have endorsed to assist him, the defendant, in his said fraud on her title and right in and to the aforesaid property by signing and executing to the defendant certain quit-claim deeds, copies of which will be produced at the hearing hereof.

The defendant produced and filed for registration with the Register of Shelby County, Tennessee certain deeds, the Record Book, pages and numbers will be shown on the hearing, these deeds purport to have been made to the defendant by the above named parties, alleged brothers and relatives of the complainant's deceased husband, John Jones, none of whom had any title whatever, nor owning interest in said property, for love and affection, and the said deeds are now charged to be fraudulent, and were known, and intended by the defendant and the above named parties thereto, to be fraudulent when made, and they were made for the purpose of concocting or shaping up fraudulently, by said Will Jones, a defense to this suit, and fraudulently defeating complainant's right by a title which had no existence at the time this suit was filed. This complainant had no knowledge of the existence of the said deeds, and had she known of their existence when this suit was filed, she would set up the facts unto your Honor, and she had no means of knowing of them until they were produced by defendant.

Complainant, prays that defendant be compelled on the hearing to dil-ver up the deeds mentioned for cancellation, and that by the final decree to be hereafterwards made by your Honor that the same be cancelled and held for naught in all respects and that the cloud

upon her title thereby created be removed, and for such other
21 and further general relief as your honor deems fit in the premises.

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me, Jas. F. Williams, a notary public, in and for said county and state duly commissioned and qualified, Margurite Jones the complainant is the foregoing supplemental bill, and made oath that the facts therein stated are true to the best of her knowledge and belief, and on her own personal knowledge and belief, except those made on information and belief, and those she believes to be true. At Millington, Tennessee, June 20/1909.

JAS. F. WILLIAMS, *N. P.*

EXHIBIT "B" TO AMENDED AND SUPPLEMENTAL ANSWER OF DEFENDANT WILL JONES.

For and in consideration of our love and affection for our nephew, Will Jones, col., the only son of our deceased brother, John Jones, col., who died intestate several years ago in Shelby County, Tenn., and for other valuable and sufficient considerations, I, Arthur Jones, of Tunica, County, Mississippi, hereby give, transfer, convey and quit-claim unto the said Will Jones, col., all our right, title, claim and interest of whatever nature and character, in *the*
22 to the following real estate, lying and being in the second (2nd) civil district of Shelby County Tennessee, and described as follows, to-wit:

The south 87 acres of Lot No. 1 in th- susbdivision of the Isa-c L. Bolton estate, in Range 7, section 5, being a part of what is known as the Rob't Goodloe three thousand acre grant No. 91, the aforesaid 87 acres of land being the same which was purchased by our deceased brother, the said John Jones, in his lifetime and which he died seized and possessed of, as shown by the record in the Register's office of Shelby County, Tenn., where his deed to said land is duly recorded to which reference is made.

To have and to hold the aforesaid 87 acres tract of land in so far as my right and title may now exist as the brother of the said John Jones, deceased unto the said Will Jones, col., his heirs and assigns forever.

In witness whereof, the said party hereunto set his hand and affixed his seal at Tunica, in the County of Tunica, and State of Mississippi, on this the 5th day of April, 1909.

ARTHUR x JONES.
mark.

STATE OF MISSISSIPPI,
Tunica County:

Personally appeared before me, W. H. Houston, Notary Public for the town of Tunica, and said County and State, the within named

Arthur Jones, who acknowledged that he signed and delivered the foregoing instrument on the day and year therein mentioned
23 for the purpose therein expressed.

Given under my hand and seal of office, this the 5th day April A. D., 1909.

[N. P. SEAL.] W. H. HUSTON, *N. P.*

(My commission expires 3-6-1911.)

STATE OF TENNESSEE,
Shelby County:

Filed for Registration May 8, 1909, at 11:58 A. M. and noted in note book No. 25 page 4 and was recorded May 11, 1909.

JAMES H. BARREY,
By JOS. GRAHAM, JR., *D. R.*

EXHIBIT "C" TO AMENDED AND SUPPLEMENTAL ANSWER OF DEFENDANT WILL JONES.

For and in consideration of our love and affection for our nephew, Will Jones, col., the only son of our deceased brother, John Jones, col., who died intestate several years ago in Shelby county, Tenn., and for other valuable and sufficient consideration we Pony Jones and Zack Jones of —— County, Arkansas, hereby give, transfer, convey and quit claim unto said Will Jones, col., all our right, title claim and interest of whatever nature and character, in and to the following real estate, lying and being in the second civil district of Shelby County, Tennessee, and described as follows to-wit:

The south 87 acres of lot No. 1 in the subdivision of the Issac Bolton estate, in range 7, section 5, being a part of what is
24 known as the Rob't Goodloe's three thousand acre grant No. 91 the aforesaid described 87 acres of land being the same which was purchased by our deceased brother, the said John Jones in his life time and which he died seized and possessed of, as shown by the record in the Register's office of Shelby County, Tenn., where his deed to said land is duly recorded to which reference is made.

To have and to hold the aforesaid 87 acres tract of land in so far as our right and title to same now exist as the brother of said John Jones, deceased, unto the said Will Jones, col., his heirs and assigns forever.

In witness whereof, the said parties have here unto set their hands and affixed their seals at Grady in the county of Lincoln and State of Arkansas, on this the 18th day of March, 1908.

PONY JONES.
ZACK X JONES.

Attest:
G. S. HAWLEY.
L. R. REEVES.
JAS. W. REYNOLDS.

STATE OF ARKANSAS,
County of Lincoln:

Personally appeared before me, nortary public, a Notary in and for said State and county at — duly commissioned and qualified, Pony Jones, the within named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the
25 within and foregoing instrument for the purpose therein contained and expressed.

Witness my hand and notarial seal at Grady, on this the 18th day of March, 1909.

[N. P. SEAL.] G. E. HAWLEY, *N. P.*

STATE OF ARKANSAS,
County of Drew:

Personally appeared before me, Joe E. Clark, a N. P. in and for said State and County, at Blissville Ark., duly commissioned and qualified, Zack Jones, the within named bargainor with whom I am personally acquainted and who acknowledged that he executed the within and for-going instrument for the purpose therein contained and expressed.

Witness my hand and not-rial seal, at Blissville, Ark. on this the 18th day of March, 1909.

[N. P. SEAL.] JOE E. CLARK, *N. P.*

My commission expires Oct. 24, 1912.

STATE OF TENNESSEE,
Shelby County:

Filed for registration May 8, 1909 at 11:58 o'clock A. M. and noted in note book no. 25 page 44 and was recorded May 11, 1909.

J. H. BARRET, *Register,*
By JOS. GRAHAM, JR., *D. R.*

The Answer of Defendant Will Jones to the Original Bill and Supplemental Filed Against Him in This Cause by the Complainant.

26 This defendant, Will Jones, in addition to the answer heretofore filed by him in this cause which he now adopts, makes further answer to the amended and supplemental bill and says:

He here and now adopts and re-affirms, and makes his answer, to said original bill, his answer now and would further state that since the filing of said answer, he has procured the deeds properly executed, from Arthur Jones, Pony Jones, Zack Jones, Francis Newman and husband Jeff Newman, and Joannah Cole and Her husband John Cole the brothers and sisters of his deceased father John Jones, conveying to him all their right title, claim and interest in and to the land described in the bill of complaint, a copy of which said deeds

are herewith filed, and marked exhibits A, B, and C, and made a part of this answer to said bill.

That the defendant, Will Jones, by virtue of these said deeds, exhibits A, B, and C, now has all the rights, title, claim and interest in and to the said land in controversy, which the said brothers and sisters held therein.

The complainant Margurite Jones, never had any children or heirs at law by her former husband, John Jones, deceased, and even if the defendant does not have any right in said land in himself, as the son of John Jones, then by these transfers, or deeds he becomes the owner of the right of the several parties thereto, and is thereby entitled to the same interest in said land, as if he were in all
27 respects, the legal and direct heirs of his father, John Jones.

That the defendant, therefore, either as the rightful heir of his father, or as the owner of the interest of these several parties, brothers and sisters of his father, is entitled to all of said property except the homestead and dower rights of Margurite Jones, who was the wife of his deceased father, and the defendant is entitled to his interest in said land, and to have it set apart to him by proper division, metes and bounds, and this is asked to be done by complainant.

The defendant is advised and believes that he has a legal title to said property and that Margurite Jones, as the wife of John Jones, only has a homestead right and life estate, as doweress, in said property, and as his father died seized and possessed of said property by purchase, she can only have her dower and homestead right and interest set apart to her under the law.

That the defendant most emphatically denies the allegation in the bill of complainant that he attempted fraud or that he committed any fraud on the rights of complainant by procuring deeds, copies of which are herewith filed marked exhibits A, B, and C, hereinbefore referred to, from his uncles and aunts who are brothers and sisters of his deceased father, and stated that he is advised and believes that he had a perfect right to obtain those deeds and that the complainant is in no worse condition from a legal point of view by virtue of the fact that he had those deeds, than if
28 the title to the same land were in the brother and sisters of his father, making those conveyances to him.

That defendant further states by way of answer to the amended and supplemental bill, that the fact that his own uncles and aunts have made and executed deeds to him, constitutes no fraud against the complainant, and no fraud is pointed out or specifically designated nor could it be, for the reason that there could be no fraud of which the complainant could complain in such a transaction, and the defendant denies that he is guilty of any fraud either in law or fact in the entire transaction, and denies that any of said deeds are fraudulent and denies that they were made and executed for any fraudulent purpose or intention on the part of the parties, making them or this defendant in whose favor they are made, and also denies that said deeds were made and executed for the purpose of shaping up fraudulently any defense to this suit, as the status of

the complainant, as to this particular tract of land is in no way changed or altered by these deeds, for she would have to fail or succeed on her own title and not weakness of the title of the defendant; and if the fee simple title appears to be in any other parties, than the complainant, she must fail to that extent and the title conveyed to the defendant by these three said deeds, can only be such as that possessed by the parties making the said conveyances.

That the defendant has a perfect right to set up his title by these deeds which are his in every sense, and the complain-
29 ant has no right to attack them in this proceeding in this way, as he is advised, and that she has no right to have them cancelled, nor given up for any purpose.

Now having fully answered the original and supplemental bill in this cause, the defendant asks, that the complainant, according to the terms of her bill, have her dower and homestead apart and that this defendant be given possession and use of the balance of said property and that complainant be taxed with the cost of this proceeding and the defendant go hence with his reasonable cost in this cause.

——— ———.

I, Will Jones, make oath that the statements made in the foregoing answer are true and correct.

Subscribed and sworn to before me, this — day of June, 1909.

——— ———.

Order as to Filing of Supplemental Bill.

In this cause it is ordered that the Clerk & Master of this Court shall record the filing of the Supplemental bill of complaint as of date, June 4th, 1909, it appearing to the court that said bill was prepared and placed on the file of the cause on said date and treated thereafter as filed.

* * * * * * *

30 *Final Decree and Appeal and Appointing Commissioners to Partition.*

Chancery Court, Part 11, Shelby County, Tennessee.

R. D., 15380.

MARGURITE JONES et al.,
vs.
WILL JONES.

This cause coming on to be heard this day upon the original bill, the amended and supplemental bill of complainants, and the answer to said bill by the defendant, and the proof in the case, and the entire record in the cause, the stipulation of counsel from all parties made in open court, that complainant might take and treat

the affidavits of Joanna Cole and John Cole, on file herein, as depositions duly taken, and the argument of Counsel.

From all of which it appears to the court that John Jones, the husband of the complainant Margurite Jones, died seized and possessed of the following land described in the complainant's bill, situated in Shelby County, Tennessee, and bounded as follows:

The south 87 acres of Lot No. 1 of Isaac L. Bolton estate, in the 2nd civil district of Shelby County, Tennessee, Range 7,
31 Section 5, part of Robt. Goodloe's 3,000 acre grant No. 91, and beginning at the southwest corner of said Lot No. 1, west to a point, thence east to the east line of said Lot No. 1, the same being the Memphis and Randolph Road, thence south with the said Road to a point the line leaves the road, thence west as the line of said lot is now run to a point, thence south the line of said lot No. 1, as it now runs, to a point, thence west to the beginning, said lines to be run so as to make 87 acres of land.

It further appears that complainant Margurite Jones is the lawful widow of said John Jones, deceased who resided in this county on the above premises at the time of his death, and that she has brothers and sisters now living, and that as the widow of said John Jones deceased, is entitled to her homestead interest in the said above property to the value of One Thousand Dollars, and to her dower interest in and to all of the remainder of said property, that she is not entitled to be vested with the title to the said property as her separate estate, that in the purchase of the same, said John Jones, her deceased husband, was not her trustee, but that he, the said John Jones, by the said purchase became the owner of said land, and his said widow at his death became entitled to her homestead and dower interest therein and to naught else, and this court therefore orders, adjudge- and decrees that John W. Craddock, B. L. Harmon and the County Surveyor of Shelby County, all those of whom are unconnected by affinity or consanguinity with any of the parties to this suit and are freeholders of said county,
32 be and they are hereby appointed as commissioners to allot and set apart to the complainant Margurite Jones, homestead and dower in the said land and premises herein described and to make their report, accompanied by a plat of the said lands;

The commissioners will set apart a homestead out of said lands first and then set apart dower in one-third of the remaining.

Thereupon complainant prayed an appeal to the next term of the Supreme Court of Tennessee for the Western Division thereof, which meets at Jackson on the first Monday in April, 1910, from said above decree, which was by her excepted to and the court exercising its directions, grants said appeal upon her giving *beyond* for cost as required by law.

Cost Bond.

We, Margurite Jones and Albert Jones as principal and Coswell Franklin as surety, acknowledge ourselves indebted to Will Jones in the sum of Two Hundred and Fifty dollars, to be void if the said

Margurite Jones and Albert Jones Complainants in a bill which has this day been filed in the Chancery Court against the said Will Jones shall pay all such costs as may be awarded against them by the court in its decrees and orders in said cause.

This 13th day of June A. D. 1910.

MARGURITE JONES,
By H. R. SADDLER, *Att'y.*

33

ALBERT JONES,
By H. R. SADDLER, *Att'y.*
his
COSWELL X FRANKLIN.
mark.

Witness.
H. R. SADDLER.

Subpœna to Answer.

Issued June 14/10.

R. D., 16175.

MARGURITE JONES et al.
vs.
WILL JONES.

The State of Tennessee to the Sheriff:

Summon Will Jones If to be found in your County, to appear before the Chancery Court of Shelby County, at the Court House in Memphis, Tenn., on the first Monday in July next then and there to answer the Bill of review of Margurite Jones et al. a copy of which ac-ompanies this writ. Herein fail not, and have you then and there this Writ.

Witness Lamar Heiskell C. & M. of said Court, at office, in Memphis this 14th day of June 1910.

LAMAR HEISKELL, *C. & M.*,
By W. M. COX, *D. C. & M.*

Sheriff's Return.

Came to hand *July* 14/10 executed June 17/10 by reading this writ to Will Jones and by leaving copy with him.

34

F. L. MONTEVERDE, *Sheriff*,
By C. F. HOWELL, *D. S.*

Order Overruling Demurrer.

Entered August 11/10.

R. D., 16175.

MARGUERITE JONES
vs.
WILL JONES.

This cause came on to be heard upon motion to dispose of the demurrer herein, and having been argued by counsel and considered by the Court, the Court is of opinion that the demurrer should be overruled, and the general grounds of demurrer are hereby overruled, with leave granted to the defendant to rely upon the demurrer in his answer.

35 *Answer, Demurrer, and Plea of Will Jones.*

Filed December 22, 1910.

R. D., 16175.

MARGUERITE JONES and ALBERT JONES
vs.
WILL JONES.

The Demurrer, Plea, and Answer of the Defendant, Will Jones, to the Bill Filed against Him in the Above Entitled Cause.

This defendant demurs to the bill, because it shows on its face that complainants cause of action set forth in this bill are the same matters and things which were set out in the pleadings in the former suit and were litigated in this Court and finally adjudicated and a final decree rendered in favor of the defendant and from which said decree, the complainants appealed to the Supreme Court of the State of Tennessee at Jackson, Tennessee and that the said decree of this Court was affirmed by the Supreme Court, which is a Court of last *record* and a procedendo was awarded and issued therefrom which was entered in this Court, directing the carrying out of said original decree of this Court; and therefore a bill of re-
36 view will not lie in this court for any purpose, nor for any reason, as this is in effect a decree of the Supreme Court of the State.

And defendant further demurs because said bill shows on its face that the Supreme Court has declared the law as to the matters and things involved in this law suit by judgment of *affirming* in the former suit, upon the pleadings and evidence in said former suit, and said pleadings show that no other proper or different judgment could have been rendered and the law as adjudged by the Supreme

Court in said former suit was in conformity with the forms and practice of the court on said pleadings and proof in said cause.

Defendant also demurs because no bill of review lies in the Chancery Court to review a decree of the Supreme Court of the State, neither for error apparent in the record, nor for newly discovered evidence nor for any purpose whatever; and the defendant relies on the several grounds of demurrer as a defense to this bill and also demurs further to said bill because no affidavit or petition is filed by complainants setting forth the alleged new matter of evidence discovered and no leave of this court was ever obtained to file a bill of review in this suit.

This defendant not waiving the foregoing demurrer for plea to the said bill, says:

That *therefore*, and before the complainants filed their present said bill in this court, to-wit: on the 8th day of February
37 1909, they, the complainants, filed another bill in the Chancery Court of Shelby County, Tennessee, against the defendant with identically the same parties and *so* to the same matter and demands and to the same effect, and for like *relief*, as they the complainants, by this present bill, demand and set forth; that is to say, the complainants in their said former bill alleged that the defendant Will Jones was an illegitimate child and had no right, title nor interest in and to the said 87 acres tract of land which is described as "The south 87 acres of lot number 1 in subdivision of Issac L. Bolton estate, in the second Civil District of Shelby County, Tennessee, and Range 7 and section 5, being part of Robert Goodloe's 3,000 acre grant number 91". The said complainants, in the said former bill, alleged therein that the said Marguerite Jones was the widow of John Jones, deceased, and that she had no children and that the said defendant, Will Jones was attempting to set up some claim to the above described property and asked that she be decreed the property in toto by title in her absolutely or that anyhow, her right, to homestead and dower be determined and set apart to her in whatever claims or right her husband had in the above described lands; if she was not entitled to the whole, and that the property was only held in trust for her by her deceased husband, as she had furnished the purchase money to buy it.

The complainants further alleged in the former bill heretofore filed in this court, that the defendant, Will Jones, fraudulently attempted to procure a record title to this property above
38 described by procuring certain deeds and alleged also, that Arthur Jones, Pony Jones, Zack Jones, Francis Newman, wife of Jeff Newman, and Joanna Cole, wife of John Cole, the brothers and sisters of John Jones, deceased, were endeavoring to assist the defendant Will Jones, in his perpetration of a fraud on her title and rights in and to the above described property and that they had executed to the defendant, certain deeds, copies of which are made exhibits to the amended answer of the defendant, Will Jones, Complainants, in said bill, alleged that the said deeds had been recorded in the office of the Register of Shelby County, Tennessee and that they purported to have been made to the defendant, Will Jones by the said named parties, alleged brothers and

sisters of her husband, John Jones, and also alleged in said former bill, that none of the said brothers and sisters of said husband, John Jones, had any right or title whatever to, nor interest in, said real property and that said deeds were fraudulently procured and were made for love and affection by the above parties, for the purpose of concocting or shaping up a fraudulent defense, in that former suit, by Will Jones, and for the purpose of fraudulently defeating the complainan*ys* in their rights and title to said property by a title which had no existence, and that the said conveyances by the alleged brothers and sisters of the husband of complainant Marguerite Jones, the said John Jones, deceased, were so made in furtherance of the collusion and fraud whereby the defendant, in conjunction with said brothers and sisters of the deceased John Jones, was striving to get a title to the above described property, and it was also further alleged in said former bill that the
39 complainant, Marguerite Jones, and husband Albert Jones, were entitled to said property because the deed which was in the name of the husband, John Jones, should have been made in the name of and for the said Marguerite Jones, as she furnished the money originally to her husband with which the purchase was made of said tract of land. In the said amended bill of complainants in the former suit, special reference was made to said deeds from the brothers and sisters of said John Jones deceased, and proof was taken by the complainants, and Marguerite Jones testified hereself and showed that the said Pony Jones, Arthur Jones, Zack Jones, Francis Newman wife of Jeff Newman, Joanna Cole, wife of John Cole, were the brothers and sisters of the said John Jones, deceased. The said former bill and amended and supplemental bill also prayed that the complainant, Marguerite Jones, be decreed all of said real estate in her own right and if not that then to be entitled to have dower and homestead set apart to her in the said lands in any event, but also prayed that the deeds made and executed by the said brothers and sisters of her husband, John Jones, deceased, be cancelled and for nothing held and for general relief; all which will fully and at large appear, by reference to the original and supplemental bills and answers in the cause and a copy of the balance of the record of said suit consisting of the evidence which is herewith filed, marked exhibit "A" to this plea and made a part hereof; a copy of the original and amended and
40 supplemental bill and the answer of each, are fully set out and made exhibits to the present bill filed by complainant- in the above cause, called a bill of review and need not be made exhibits to this answer.

This defendant was served with process under said former bill and amended bill and made answer in substance as follows:

1. The defendant, Will Jones, denied that the said Marguerite Jones, the wife of his deceased father, John Jones, paid any money with which to purchase the land hereinbefore described and aver-ed that his father paid the entire amount and that he himself assisted in earning the money with which the purchase was made.

2. The defendant answered fully as to the charges of fraud and denied the same or that he had in any way attempted to perpetrate

any fraud on the complainants and also stated that he was advised that even if any fraud had existed in procuring the deeds from the brothers and sisters of his decease- father it did not and could not affect the rights of the complainant, but did deny that any fraud was perpetrated.

3. The defendant averred and stated in his answer both to the original and supplemental bill of the complainants, that the said Pony Jones, Arthur Jones, Joanna Cole, wife of John Cole, Francis Newman, wife of Jeff Newman, brothers and sisters of his deceased father, John Jones, were really the brothers and sisters of his deceased father and as such had rights in land in controversy and that the conveyances which they had made to him, transferred to
41 him, whatever rights they had in and to said property by virtue of the- being brothers and sisters of his father, John Jones, deceased, whom died leaving no children by his present wife and none except defendant himself, and that the fact that he had procured said deeds from said parties above named, in no way affected the real rights of the said Marguerite Jones to the said real estate as the wife and widow of her deceased husband, because he himself had only such rights as the brothers and sisters had in said property and averred that complainant, Marguerite Jones, was only entitled to homestead and dower in said real property.

This defendant further says that on the issues thus made, proof was taken by depositions which proof showed the fact to be that said Arthur Jones, Pony Jones, Zack Jones, Joanna Cole wife of John Cole, Francis Newman, wife of Jeff Newman, were the brothers and sisters of the said John Jones deceased, of the complainant, Marguerite Jones, and the defendant, Will Jones took no other proof than simply the certified copies from the records of the said deeds by the above parties. All of which may fully appear by reference to copies of said depositions exhibit "A" and copies of deeds filed in said former cause and copies in complainant's bill, which said record is filed and marked exhibits hereto. The said former suit came on for trial in this court and was heard upon its merits in and by this court, and this court decreed on the merits of the case that the
42 said Marguerite Jones, was only entitled to homestead and dower in said property, as the wife and widow of her deceased husband, John Jones and nothing else; and by order of said court, three commissioners were named and appointed to set apart to the complainant, the said Margaret Jones, Homestead and dower in said land heretofore described. From this decree rendered in this court which was final an appeal was taken by the complainants in this former suit, to the Supreme Court of the State of Tennessee, held at Jackson, Tennessee, and was there, affirmed by said court, upon a transcript of the record there filed of this former cause, involving the identical parties and questions of law and fact and issues now set out in the pleadings in complainants' present bill. Said Supreme Court affirmed the decision of this court and procedendo was awarded and sent back to this court from said Supreme Court directing the carrying out of the decree of this court and was here filed and judgment rendered thereon by this court accordingly, a

copy of which is herewith filed and marked exhibit "B." The said record in said Supreme Court not copied in complainants' bill is also herewith filed and marked exhibit "A" as before stated, and is made a part of this plea, to which reference is here made. Therefore the defendant pleads former suit, proceedings and adjudications thereon in bar of the present bill, and avers and says that said adjudication, especially as same was affirmed by the Supreme Court of Tennessee, is and remains in full force and effect and the remedy of complainants is exhausted and for further plea in bar
43 states that all matters set forth in the pleadings in the present bill have been heretofore adjudicated, not only by this court, but by the Supreme Court, a court of last resort and that all remedies have been exhausted and settled so far as the rights of the complainants are concerned and the law of the case finally determined.

The defendant, Will Jones, has herewith filed and made exhibits hereto, true copies of all the testimony taken in the former cause in behalf of the complainants, and the complainants in their bill have set out true copies of the deeds of conveyances made and executed to the defendant, by the brothers and sisters of John Jones, deceased, as well as the entire pleadings in the former cause and the defendant has made and filed, as exhibits hereto, certified copies of the original decree of this court from which an appeal was taken and the procedendo awarded by the Supreme Court and decree of *h*is court thereon and etc., to all which reference is made in verification of this plea and statements herein made.

Hence, the defendant, prays *and* judgment of the court whether he shall be required to answer further and also prays hence to be dismissed with his costs.

WILL JONES, *Defendant.*

COCKROFT & ODLE,
Sol-. for Defendant.

44 STATE OF TENNESSEE,
Shelby County:

The defendant, Will Jones, makes oath that his foregoing plea is true in substance and fact.

WILL JONES, *Defendant.*

Sworn and subscribed to before me on this the 22 day of December 1910.

W. M. COX, *D. C. & M.*

And the defendant, not waiving his said plea nor demurrer herein, but relying on both of same, further answering said bill says:

That he in no way practiced any fraud in the procurement of said decree, nor in the matter of obtaining the conveyance to the land from the brothers and sisters of the former husband of complainant, John Jones, and that issue was made on this point in the former suit and it was decided adversely to complainants and when complainants through their attorney in the former suit claimed he could make certain proof and set it out in an affidavit, counsel for de-

fendant agreed that the affidavit itself might be read as a deposition of the party and to this counsel for complainant's said *bill* this could be satisfactory and the case was tried on the evidence of the complainants, the certified copies of the deeds *and* etc.

That the defendant did not hurry the case through in
45 the former suit but the bill was filed on the 8th day of February 1909 and was not tried until Dec. the 6th, 1909, so that the complainants had ample time to find out anything that could be found out about the case and from the pleadings and evidence in the cause it is plain that no other or different judgment could have been rendered. This cause was tried in this Court on its merits & was appealed to the Supreme Court and there affirmed and a procedendo awarded and was issued from the Supreme Court showing the affirmance and directing that the decree rendered by this court be carried out and the procedendo was regularly entered in this court, all of which appears from the original decree in this cause and the several orders of entry certified copies of which are herewith filed and marked exhibits and made a part of his answer.

By an inspection of the pleadings in the former suit, it is clear that the same issues were presented then as in this present suit and the same proof required to make out the case as in the present one and the complainants took all the proof then and showed that these very parties from whom the deeds were procured by defendant, Will Jones, were the brothers and sisters of John Jones deceased and that the said John Jones had no children by his marriage to the said Marguerite Jones and that he had no child unless the defendant was one, which was a disputed fact. Hence, as defendant is informed and believes, according to the pleadings and proof he is entitled to all of said lands in fee subject only to the homestead and dower right of one of the complainants Margurite Jones, as the widow of John Jones, deceased and defendant avers that there was no proof nor record evidence to show from
46 the pleadings that the complainant, the said Marguerite Jones, was entitled to any more than shown by said decree, as affirmed by the Supreme Court in the former suit, and defendant further states that there is no proof, nor record evidence of any character, which would bring the case in the former suit, within any exception to the law of descent and distribution, if such there should be, and the highest court of the land had settled the law of the former case and declared the same as it relates thereto.

The defendant further denies that there is any error apparent on the face of the record with reference to the former decree in the other suit sought to be reviewed by the complainant's bill in this cause and denies that there is any error whatever in the former decree, as rendered on the pleadings and proof in the said former cause, and also denies that the complainants have discovered any new evidence or that there is any ground for such statement in said bill, and further avers that the complainants do not set out in their said bill any such matters as to entitle them to any relief on account of the allegation, as to newly discovered evidence, and, therefore,

defendant denies that the complainants are entitled to any relief on account of the allegation as to newly discovered evidence because there is no statement nor allegation as to this evidence and no statement that said evidence could not have been obtained by the exercise of any effort or an attempt to procure any other evi-
47 dence than what was produced and allowed in the former trial.

The depositions of the complainants were taken and also the affidavits of Joanna Cole and John Cole and the same were read as evidence on the former trial and also the affidavits of the complainant, Marguerite Jones was allowed to be read the same as if a deposition in the cause and were all submitted to the court in the former suit with the entire record in the cause.

A true copy of all this evidence has been filed to the plea in this cause which is here referred to as exhibit A in verification of the statement here made.

The said Marguerite Jones testified among other things that she had no children by her deceased husband, John Jones, and that he had living brothers and sisters, naming them, as Pony Jones, Arthur Jones, Zack Jones, Francis Newman, and Joanna Cole, who has since died. This evidence is found in the transcript of the record to the Supreme Court in the former cause on pages 32-33 and 43 and in the records of this court in the former suit, a true copy of which is filed, and shows that these identical parties who made the deeds to defendant, Will Jones, were the real brothers and sisters of the said John Jones, deceased, and the amended bill was filed by complainants attacking these deeds executed by the brothers and sisters of the said John Jones and sought to have them annulled and set aside in the proceedings in the former suit. Therefore, as defendant is informed and believes, there can be no grounds upon which to sustain this suit as an original bill
48 and all charges as to fraud are most emphatically denied by defendant in the conduct of the former suit and in the procurement of the decree in that cause and no specific fraud is alleged and set out in complainants' bill and having answered all the material allegations in this bill of complainants, defendant asks that the same may be dismissed as to him with his reasonable costs herein.

WILL JONES, *Defendant.*

COCKROFT & ODLE,
Solicitors for Defendant.

STATE OF TENNESSEE,
Shelby County:

Comes defendant, Will Jones and makes oath that the statements made in his foregoing answer to complainants' bill, are true.

WILL JONES.

Sworn and subscribed to before me on this the 22 day of December, 1910.

W. M. COX, *D. C. & M.*

49 STATE OF TENNESSEE,
Shelby County:

Be it remembered, That at a Term of the Chancery Court of Shelby County, state aforesaid begun and held at the court house in the city of Memphis, in and for said County on the first Monday, in October 1909, present and presiding the Hon. H. D. Minor, chancellor of said court Part 2.

On to-wit the 10th day of Dec. 1909, one of the days of said term the following proceedings were had as appears of record in Minute Book 134, page 249, M. B. 134 page 628 and M. B. 136 page 14, viz:

No. 15380, R. D.

MARGURITE JONES et al.
vs.
WILL JONES.

This cause coming on to be heard this day, upon the original bill, the amended and supplemental bill of complainants and the answers to said bill by the entire record in the cause, the stipulation of counsel for all parites made in open court that complainants might take and treat the affidavits of Joanna Cole and John Cole on file herein, as depos-tions duly taken, and the argument of counsel.

From all which it appears to the court that John Jones, the husband of the complainant Margurite Jones died seized and possessed of the following lands described in the complainant's bill, situated in Shelby county, Tennessee and bounded as follows:

The south 87 acres of lot 1 of Issac Bolton estate in the 2nd Civil District of Shelby county, Tennessee, Range 7, Section
50 5, part of Robt. Goodloe's 3000 acre grant of said lot No. 1 west to a point, thence east to the east line of said lot No. 1, the same being the Memphis and Randolph Road, thence south with the said Road to a point the line leaves the road, thence west as the line of said lot is now run to a point, thence south with the line of said Lot No. 1 as it is now run, to a point, thence west to the beginning said lines to be run so as to make 87 acres of land.

It further appears that complainant Margurite Jones is the lawful widow of said John Jones, deceased, who resided in this county on the above premises at the time of his death and that she has no children by her said deceased husband, but that he has brothers and sisters now living and that she as the widow of the said John Jones deceased is entitled to her homestead interest in the said above property to the value of One Thousand Dollars, and to her dower interest in and to all of the remainder of said property; that she is not entitled to be vested with the title to the said property as her separate estate, that in the purchase of the same the said John Jones her deceased husband was not her trustee, but that he, the said John Jones, by the said purchase became the owner of said land, and his said wife, at his death became entitled to her homestead and dower

interest therein and to naught else, and this court therefore orders, adjudged and decreed that John W. Craddock, B. L. Harmon and the County Surveyor of Shelby County, all three of whom are unconnected by affinity or consanguinity with any of the parties to this suit, and are free holders of said County, be and they are
51 hereby appointed as commissioners to allot and set apart to the complainant, Margurite Jones homestead and dower in the said land and premises herein described and to make their report accompanied by a plat of the said lands; the commissioners will set apart a homestead out of said lands first and then set apart dower in one third of the remaining land. Thereupon complainant prayed an appeal to the next term of the Supreme court of Tennessee for the Western Division thereof, which meets at Jackson on the first Monday in April, 1910 from said above decree, which is by her excepted to, and the court exercising its discretion, grants said appeal, upon her giving bond for costs as required by law.

And also in the same style- cause the following proceedings were had, as appears of record in M. B. 134, p. 628, viz:

MARGURITE JONES et al.
vs.
WILL JONES.

In*n* this cause, Cockroft & Odle, solicitors of the defendant, Will Jones, produced the procedendo and decree of the Supreme Court affirming the decree of this court heretofore pronounced and appealed from, and moved the court to enter said proce-do on the minutes of this court and to re-instate the cause on the docket all of which motions are allowed.

Said procedendo is as follows: to-wit:

52 No. 17, Shelby C. D.

MARGURITE JONES
vs.
WILL JONES.

This cause was heard upon the transcript of the record from the Chancery Court of Shelby County, and it appearing to the court that no assignments of error having been filed, the same is in all things affirmed.

It is therefore ordered, adjudged and decreed that the decree of the chancellor be affirmed and the cause remanded to the chancery court of Shelby county for the carrying out of the decree appealed from.

The costs of the appeal will be paid by complainant- Margurite Jones and Albert Jones and sureties H. R. Saddler and C. Franklin, for which execution may issue.

The costs of the lower court will be paid as the Chancellor directs.

The Clerk & Master is directed to re-enter the cause on his docket,

which is done accordingly. It also being made to appear to the court that one H. B. Harmon who was, by a decree of this court heretofore made and entered appointed as one of the commissioners to lay off and set aside homestead and dower for the complainant Margurite Jones, has died since the rendering of said decree, Therefore the Court hereby appoints, Alfred Miller who is a free holder of the county, and who is unconnected by affinity or consangu-nity with any of the parties to this suit, as one of the commissioners, instead of said H. B. Harmon, deceased to act in conjunction with the other two commissioners heretofore appointed in this
53 cause to allot and set apart to said Margurite Jones, out of said tract of land described in bill and decree of this court as affirmed by the Supreme Court.

The said three commissioners after being duly sworn and qualified, according to law shall first set apart and allot a homestead of the value of One Thousand Dollars, and then one-third of the remainder of said tract of land, *a* according to quality and quantity, as dower. The commissioners will make their report, accompained by a plat, to a later day of the present term of this court.

Ans also in the same style- cause the following proceedings were had, as appears in M. B. 136, page 14, viz:

In this cause it appearing to -he court that one of the commissioners, Miller, was appointed heretofore under the name of Alfred Miller when it should have been Robert Miller or R. B. Miller as he was the party intended, Therefore, on motion it is hereby ordered that correction be made and that said Robert Miller (R. B. Miller) of Millington be and he is appointed as the proper person to act with the County Surveyor and J. W. Craddock in setting aside homestead and dower for Margurite Jones in the above cause as hereinbefore ordered.

STATE OF TENNESSEE,
Shelby County:

I, Lamar Heiskell, Clerk & Master of the Chancery Court of Shelby County, State aforesaid do hereby certify that the foregoing — pages contain a full true and perfect copy of Final decree and appeal and appointing commissioners, and decree to have
54 procedendo recorded and order of reinstat-ment and appoint-ing commissioners and order correcting the name of commissioners Miller entered in a certain cause herein wherein Margurite Jones et al. — complainant- and Will Jones is defendant as the same appears in M. B. 134 page 249, M. B. 134 page 628 and also M. B. 136 page 14.

In witness whereof I have hereunto set my hand and affixed the seal of the court at my aforesaid office in the city of Memphis, this 19th day of Nov. 1910.

[SEAL.] LAMER HEISKELL, *C. & M.*

Order Overruling Motion to Dissolve Injunction and Dismissing Petition to Rehear.

Entered January 11/11.

In the Chancery Court of Shelby County, Tennessee

R. D., No. 16175.

MARGURITE JONES et al.
vs.
WILL JONES.

This cause came on this day to be heard upon the motion of the defendant to dissolve the injunction awarded in the cause, and upon petition to re-hear the demurrer; and the court being of opinion that said motion is not well taken the same is hereby overruled.

And it further appearing to the court that the demurrer was overruled at a former term of this court, it is hereby ordered adjudged and decreed that the petition to rehear be and the same is hereby dismissed, -nd the motion to rehear is overruled.

55 *Final Decree and an Appeal Prayed for and Granted.*

Entered March 2/11.

R. D., No. 16175.

MARGURITE JONES et al.
vs.
WILL JONES.

This cause coming on further to be heard on its merits, upon the original bill of complainants and exhibits thereto the plea of res adjudicata and answer and all exhibits thereto of the defendant, and the proof and entire record in the cause.

From all which it appears to the court that John Jones the husband of Margurite Jones died seized and possessed of the following real estate described in the bill of complainants situated in the County of Shelby and State of Tennessee, and more particularly described as follows, towit:

"The south 87 acres of Lot 1 of Isaac Bolton estate in the 2nd Civil District of Shelby County, Tennessee, Range 7, section 5, part of Robt. Goodloe's 3,000 acre grant No. 91, and beginning at the southwest corner of said lot No. 1 west to a point, thence east to the east Memphis and Randolph Road, thence south with the said Road to a point the line leaves the road, thence west as the line of said lot is now run to a point, thence south with the line of said
56 lot No. 1 as it now run-, to a point, thence west to the be-

ginning, said lines to be run so as to make 87 acres of land." It further appears to the court from the proof that the complainant, Margurite Jones, is the lawful widow of said John Jones, deceased, who resided in this county on the above premises at the time of his death, and that she had no children by her said deceased husband and it also further appears from the proof that said John Jones, his living brothers and sisters, deceased were ex-slaves and that Poney Jones, Arthur Jones, Zach Jones, Johanna Cole and Francis Newman who made the deeds of conveyance to the defendant, Will Jones, were born in the days of slavery and are ex-slaves, and hence have no inheritable blood, title or interest in said land as such under the law and that said conveyances by deed of the aforesaid real property to the defendant are void and of no effect.

It is therefore adjudged and decreed by the court that said deeds be set aside, cancelled and removed as a cloud on complainants' title and that complainant, Margurite Jones be vested with the title in fee to said lands hereinbefore described and that the defendant be enjoined from interfering with her in her possession and enjoyment of same as the absolute owner thereof; and that she recover of the defendant all costs accrued herein for which execution may issue.

From this decree, the defendant, Will Jones, prays an appeal to the next term of the Supreme Court of the State of Tennessee held for the western division of the State, at Jackson, Tenn., on the first Monday in April, 1911, and the defendant having made and
57 executed a good and sufficient appeal bond, and filed the same as required by law, said appeal is hereby granted, as prayed for herein.

Appeal Bond.

Filed 27 of Feb., 1911.

R. D., 16175.

MARGURITE JONES et al.
vs.
WILL JONES.

We, Will Jones appellant and surety C. T. French asknowledge ourselves indebted to Margurite Jones et al., appellees in the sum of Two Hundred and Fifty dollars. To be void if the said Will Jones above named as appellant who has prayed for an- obtained an appeal from the decree of the Chancery Court of Shelby County, in a cause in which Margurite Jones et al. are complainants and Will Jones Defendant to the next term of the Supreme Court of Tennessee, for the District of West Tennessee, to be held at Jackson, Madison County, on the first Monday in April next, shall pay all such costs as shall be awarded against him by said Supreme Court.

This 25th day of February, 1911.

WILL JONES, [SEAL.]
By S. L. COCKROFT, *Sol.* [SEAL.]
C. T. FRENCH. [SEAL.]

58 STATE OF TENNESSEE,
Shelby County, ss:

I, Lamar Heiskell, Clerk and Master of the Chancery Court of Shelby County, do hereby certify that the foregoing 147 pages contain a full true and perfect transcript of all of the proceedings had in a certain cause, lately pending herein, wherein Marguerite Jones et al., — complainant-, and Will Jones, — defendant as the same appears of record and on file in my office.

In witness whereof, I hereunto set my hands and affix the seal of said Court, at office in Memphis, this 9th day of March, A. D. 1911.

LAMAR HEISKELL, *C. & M.*,
By W. M. COX, *D. C. & M.*

59 In the Court of Civil Appeals of the State of Tennessee, Western Division, at Jackson, January Term, 1912.

MARGUERITE JONES et al. (Complainants), Appellees,
vs.
WILL JONES (Defendant), Appellant.

Appealed from the Chancery Court of Shelby County, Tennessee, Division One, to the Court of Civil Appeals, at Jackson, Tennessee.

Assignment of Errors and Brief of Appellant.

Assignment of Errors.

I.

The Chancellor erred in overruling the demurrer of the defendant to complainants' bill.

II.

The Chancellor erred in holding that the plea of res adjudicata filed by defendant to complainants' bill was insufficient and in not sustaining same.

III.

The Chancellor, on the hearing of this cause, erred in admitting and considering as competent certain illegal evidence introduced by complainants over the objection of defendant, and in
60 overruling the written exceptions filed by defendant to said illegal testimony contained in the deposition of witnesses for complainants.

IV.

The Chancellor erred in sustaining the bill of complainants as an original bill, based on a new cause of action, and in rendering judgment in favor of the complainant, Marguerite Jones, and against

the defendant, vesting her with the legal title in fee as to all of said land in controversy in this suit.

V.

The Chancellor erred in holding that because of the fact that John Jones, deceased, as well as his living brothers and sisters, were all ex-slaves, born during the days of slavery, that they could not inherit the land in controversy in this lawsuit, though the said John Jones died intestate and without children to heir his property, for the reason that there was no collateral inheritance between brothers and sisters of the colored race, born during the days of slavery, and who had actually been slaves prior to the laws giving them freedom and citizenship in this government.

61 The fifth assignment of error is as to whether or not there can be any collateral inheritance between brother and sisters (ex-slaves), born in the days of slavery.

There can be no doubt that the Court erred in this matter of the right of collateral inheritance by ex-slaves.

62 And that the fifth assignment of error is well taken, and is absolutely conclusive of this whole case; for, to hold otherwise, would be in direct contravention of the Fourteenth Amendment to the Federal constitution, as construed by the Supreme Court of the United States, and would also be in violation of sections 1977 and 1978 of the Revised Statutes of the United States.

The Fourteenth Amendment provides as follows:

"Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Supreme Court of the United States, in passing upon the Fourteenth Amendment to the Federal Constitution in the case of Yick Wo. vs. Hopkins, 118 U. S. (30 L. Ed. 220), says that the provisions of said Amendment are universal in their application, to all persons within the territorial jurisdiction, without any regard to any difference of race, of color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.

In accord with these provisions of said amendment, Congress enacted section 1977 of the Revised Statutes of the United States, which reads as follows, towit:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue and be parties, give evidence, and to —

63 the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by the white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

And also enacted Section 1978, which provides as follows:

"All citizens of the United States shall have the same right in every State and Territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

From these provisions of the Revised Statutes of the United States, passed in pursuance of the said Fourteenth Amendment of the Federal Constitution and the decisions of the Supreme Court of the United States construing same, it is clear and conclusive that colored persons, though ex-slaves, can inherit property from brothers and sisters the same as whites, and as the brothers and sisters of the whites can, and do, inherit the property of each other when one dies intestate without any children or offspring, so can brothers and sisters of the colored race inherit property in like cases. Therefore, the fifth assignment of error is good and should be sustained by this Court.

Whites inherit collaterally, brothers and sisters.

Shannons Code, Sec. 4163 and Sub-Sec. 2.

8 Lea, p. 571.

10 Pickle, p. 556.

Construction of Sections 1977 and 1978 of Revised Statutes of United States. Federal Statutes Annotated, Vol. 1, pages
64 791-795, and Citations thereunder of the U. S. Supreme Court decisions.

Respectfully submitted,

S. L. COCKROFT,
Solicitor for Appellant Will Jones.

Filed January 18, 1912. T. B. Carroll, Clerk.

65 THE STATE OF TENNESSEE:

Pleas before the Court of Civil Appeals of said State for the Western Division thereof, at the January term, A. D. 1912.

Present: The Hon. S. F. Wilson, H. N. Cate, Frank P. Hall, H. Y. Hughes and Jos. C. Higgins, Judges when the following proceedings were had, towit:

MARCH 23D, 1912.

#17, Shelby Chancery Docket.

MARGUERITE JONES et al.
vs.
WILL JONES.

This cause was heard upon the transcript of the record from the Chancery Court of Shelby County and it appearing to the Court that in the decree of the Chancellor there is manifest error, this Court being of opinion that the Chancellor was in error in granting complainants relief. The plea of res adjudicata should have been sustained.

Complainant's bill, the last one, will be dismissed with costs.
The injunction issued will be dissolved and the Chancery
66 Court is directed to proceed to carry into effect the original decree as to homestead and dower and the cause will be remanded to the Court below to carry out the decree of the Chancellor.

It is, therefore, ordered, adjudged and decreed that the decree of the Chancellor as to the last bill of complainants is reversed and the suit dismissed.

It is further ordered, adjudged and decreed that the complainants, Marguerite Jones, and husband, Albert Jones, and surety, Coswell Franklin, pay the costs of the cause for which let execution issue.

Filed June 27, 1912. T. B. Carroll, Clerk.

67 THE STATE OF TENNESSEE:

Pleas before the Supreme Court of said State, for the Western Division thereof, at the April Term, A. D. 1912.

Present: The Hon. Jno. K. Shields, Chief Justice and M. M. Neil, D. L. Lansden, Grafton Green and A. S. Buchanan Associate Judges, when the following proceedings were had, towit:

MAY 25TH, 1912.

No. 17, Shelby Chancery.

MARGUERITE JONES et al.
vs.
WILL JONES.

The petition to rehear the petition filed for certiorari and supersedeas at a former day of this term and denied by the Court, is, after full consideration, dismissed, this Court being of the opinion that the petition is not well taken and the same is dismissed at the costs of the petitioner, for which execution may issue.

Filed June 27, 1912. T. B. Carroll, Clerk.

68 THE STATE OF TENNESSEE:

Pleas before the Supreme Court of said State for the Western Division thereof, at the April Term, A. D. 1912.

Present: The Hon. Jno. K. Shields, Chief Justice and M. M. Neil, D. L. Lansden, Grafton Green and A. S. Buchanan Associate Judges, when the following proceedings were had, towit:

JUNE 15, 1912.

Shelby. Equity.

MARGUERITE JONES et al.
vs.
WILL JONES.

Decree.

This case coming on to be heard by the Court upon the petition of complainants for a writ of certiorari to remove the same from the

Court of Civil Appeals and review the decree of that Court, the Court was pleased to grant said writ and take jurisdiction of the case.

Thereupon this cause coming on to be heard upon the transcript of the record from the Chancery Court of Shelby County, the opinion and decree of the Court of Civil Appeals, and the assignments of error filed by the complainants in this Court, and the reply brief filed thereto, and it appearing to the Court that treating com-
69 plainants' bill as an original bill, brought for the purpose of obtaining the relief therein prayed, that the same should be sustained upon the proof appearing in the record; that the decree of the Chancellor so adjudging was correct, and that the decree of the Court of Civil Appeals reversing said decree was error, and should be itself reversed; it is so adjudged and decreed.

The Court is therefore pleased to order, adjudge and decree that, the decree of the Court of Civil Appeals in this case be reversed, and that the decree of the Chancery Court of Shelby County sustaining complainants' bill as an original bill and granting them relief as in said court decreed is correct and without error, and the same is in all things affirmed.

It is further adjudged and decreed that the defendants pay the costs of the cause, for which execution is awarded.

This case was decided May 25, 1912, and an inaccurate decree upon that day entered. The said decree is now vacated, and this entered instead thereof now as of May 25, 1912.

Filed June 27, 1912. T. B. Carroll, Clerk.

70 In the Supreme Court of the State of Tennessee, at Jackson, April Term, 1912.

#17, Shelby Chancery Docket.

MARGUERITE JONES et al., Appellees,
vs.
WILL JONES, Appellant.

Filed May 20, 1912. T. B. Carroll, Clerk.

A Petition to Rehear on Certiorari & Supersedeas.

To the Honorable Supreme Court:

Your petitioner, the defendant and appellant in this cause would respectfully represent to the Court that he is much aggrieved by so much of the Court's opinion in this cause as decides that the decree of the Chancellor in the Court below is correct and in affirming the same, holding thereby that said suit as filed in the lower court was based on an original cause of action, and therefore, constituted an original suit based upon the fact that exslaves or persons of color born during the days of slavery had no inheritable blood between

brothers and sisters such as to enable them to inherit the real property of a deceased brother or sister dying intestate without issue leaving real estate to go to those whoever might stand in the relation of collateral heirs under the law in the same manner as
71 whites, who are provided for in the administration of our state laws.

In so holding that there can be no collateral inheritance between exslave brothers and sisters, the court sustained the said bill as an original bill and affirmed the decree of the court below.

Petitioner is advised that while there may seem to be some authorities to sustain the court's holding on this question, the general trend of authority is that the plea of res adjudicata must put at rest every question put in issue by the pleadings in the case when tried on its merits between the same parties for the same purpose, the parties suing in the same capacity in the first and last suit; and that the questions of fact which could have been proven under the issues in the first suit cannot be proven in a second suit, for the reason that all evidence establishing a question of fact, necessarily involved in the first suit, cannot be produced in the second. Petitioner believes that the weight of authority is in accord with the holding of the Court of Civil Appeals and that if any suit can be ended on a plea of res adjudicata this one, as he believes, falls within the rule of such a plea.

Petitioner further states that there is and should be collateral inheritance between exslaves, who are brothers and sisters, just the same as whites, and that it is the purpose of the statutory laws of this state to make colored persons equal in their civil rights to
72 whites; and in support of this contention, petitioner refers to Chapter 40 of the Acts of 1865-6 Sections 1-2-5 of said act, which is found on page 65 and reads as follows, towit:

"SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, that all Negroes, Mul*l*at-oes, Mestizoes, and their descendants, having any African Blood in their veins, shall be known in this State as "Persons of Color."

"SECTION 2. Be it further enacted, That persons of color have the right to make and enforce contracts, to sue and to be sued, to be parties and give evidence, to inherit, and to have full and equal benefits of all laws, and proceedings for the security of person and estate, and shall not be subject to any other or different punishment, pains or penalty, for the commission of any act or offence, than such as are prescribed for white persons committing like acts or offences."

"SECTION 5. Be it further enacted, That all free persons of color who were living together as husband and wife in this state, while in a state of slavery, are hereby declared to be man and wife, and their children legitimately entitled to an inheritance in any property heretofore acquired, or that may heretofore be acquired by said parents, to as full an extent as the children of white citizens are now entitled, by the existing laws of this State."

Section 2, of the above act does not seem to have been inserted in either one of our codes, but it provides that all persons of color shall

inherit and have full and equal benefits of all laws and proceedings for the security of person and estate, just the same as the white person, thus giving the colored people the same right to in-
73 herit; and section two of the act of 1865-6 is so amended by the act of the Legislature of 1869-70 that said second section is made to include real estate as well as personal estate and further provides that the children of their descendants or next of kin shall inherit the estate of the descendants as provided for free persons. This Act amending the act referred to of 1865-6 Chapter 40, is found in M. & V. Code Section 3288 and Shannon's Code 4182 and reads as follows:

"The above section two shall embrace and apply to real as well as personal estate, and the children of their descendants or next of kin shall inherit the estate of the descendants (decedants) as provided for free persons."

From all of these provisions of the acts of the Legislature of the State of Tennessee, as well as the general statute of collateral inheritance, it is manifest, as petitioner believes, and is advised, that it is intended that there shall be no discrimination between colored and white persons in inheriting property, either real or personal, and if the next of kin, as provided by that statute, can inherit property, then the brothers and sisters in this case though exslaves, being next of kin can inherit the real property of their deceased brother as under the same conditions white persons, who are brothers and sisters could do so. It is made clear under our law that when a brother or sister dies intestate without issue brothers and sisters, who are next of kin, can and do inherit property of each other in such a case, and hence by provisions of these several sections
74 referred to, it is intended, as the petitioner believes and is so advised, that persons of color should have the same rights.

Petitioner would further state that also under the provisions of the revised statute- of the United States, he is advised and believes, there is the same right of inheritance from the brothers and sisters of exslaves as white persons, so that the petitioner having purchased the entire interest of the brothers and sisters of John Jones, deceased, and having had said deeds recorded, conveying the title in the property in controversy in this law suit, described in the bill to him, as their direct vendee, that he now has the same right to said property as said brothers and sisters of said John Jones deceased, and stands in the room and stead of said brothers and sisters as to said property in this litigation. The provisions of the revised statutes of the United States as found in sections 1977-1978 read as follows, towit:

"All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue and to be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by the white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

"All citizens of the United States shall have the same right in every State and Territory as is enjoyed by white citizens thereof to

inherit, purchase, lease, sell, hold and convey real and personal property."

Thus it is made clear that it is the purpose of the laws passed by Congress to give the colored race of people exslaves precisely
75 the same rights as to inheritance of real property as are enjoyed by white persons and that there shall be no discrimination on account of race, color or previous condition of servitude.

Petitioner would also state that in both the suits tried in the court below it was adjudged that these parties, Pony Jones, Arthur Jones, Zack Jones, Joanna Cole and Francis Newman are the living brothers and sisters of the said John Jones deceased, who died seized and possessed of the aforesaid property described in the bill. Therefore, as such brothers and sisters they were entitled to inherit said property under the Federal Statutes referred to above, passed by the Congress of the United States in pursuance of the 14th amendment to the Constitution of the United States, as the whites have such rights. Consequently as the brothers and sisters of John Jones, deceased, could and should inherit the property of their deceased brother, dying intestate without issue, and the appellant, Will Jones, having purchased their right and title, should have a decree in his favor as he is advised and believes, giving to him the same rights that the said brothers and sisters have under the law above referred to.

Petitioner therefore prays for a rehearing in the matter hereinbefore set out; and that the appellees' (Complainants') recovery be limited and restricted in accordance with the decree of the Court of Civil Appeals, to her homestead and dower right in said real estate and nothing else, and petitioner prays also for general relief
76 under the frame of this petition for a rehearing.

S. L. COCKROFT,
BANKS & HARRELSON,
Solicitors for Petitioner Will Jones.

77 The Supreme Court of the State of Tennessee.

In Equity.

WILL JONES, Plaintiff in Error,
vs.
MARGUERITE JONES & Husband, ALBERT JONES, Defendant- in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Tennessee.

To the Honorable John K. Shields, Chief Justice of the State of Tennessee:

Your petitioner (the plaintiff in error) Will Jones, would most respectfully complain and allege:

First. That he is a citizen of the United States of America and the State of Tennessee and that in the above entitled cause or

matter on the 21st day of May 1912 final judgment was rendered against the petitioner by the Supreme court of the State of Tennessee and that said court is the highest Court of law or equity in the said State and that subsequent thereto petitioner filed an application for a re-hearing of said cause in said Court which was by the Court overruled on the 25th day of May 1912.

Second. That by the said final judgment or decree of said Supreme Court the decree of the Chancery Court of Shelby County was in all things affirmed, said decree being as follows:

"From all of which it appears to the Court that John Jones, the husband of Margurite Jones, died *siezed* and possessed of the following real estate described in the bill of complainants
78 situated in the county of Shelby and State of Tennessee, and more particularly described as follows, to-wit:

The South 87 acres of Lot 1 of Issac Bolton estate in the 2nd Civil District of Shelby County, Tennessee, Range 7, section 5, part of Robt. Goodloe's 3,000 acre grant No. 91, and beginning at the southwest corner of said lot No. 1 west to a point, thence east to the east line of said lot No. 1, the same being the Memphis and Randolph Road, thence south with the said Road to a point the line leaves the road, thence west as the line of said lot is now run to a point, thence south with the line of said lot No. 1 as it now runs to a point, then west to the beginning, said lines to be run so as to make 87 acres of land.

It further appears to the court from the proof that the complainant, Margurite Jones, is the lawful widow of said John Jones, deceased, who resided in this county on the above premises at the time of his death, and that she has no children by her said deceased husband and it also further appears from the proof that said John Jones, deceased was an exslave and that his living brothers and sisters, Poney Jones, Arthur Jones, Zach Jones, Johanna Cole and Francis Newman, who made the deeds of conveyance to the defendant Will Jones, were born in the days of slavery and are exslaves, and hence have no inheritable blood, title or interest in said land as such under the law and that said conveyances by deed of the aforesaid real property to the defendant are void and of no effect.

It is therefore adjudged and decreed by the court that said deeds be set aside, cancelled and removed as a cloud on complainant's title and that complainant, Margurite Jones, be vested with the title in fee to said lands hereinbefore described and that the defendant be enjoined from interferring with her in her possession and enjoyment of same as the absolute owner thereof; and that she recover of the defendant all costs accrued herein for which execution may issue."

Third. That the foregoing judgment or decree was rendered by the said Chancery Court of Shelby County and was appealed to the court of Civil Appeals of the said state of Tennessee and was there reversed and a decree rendered by said court of Civil appeals in favor of plaintiff in error and was then carried, by writ of certiorari and supersedeas, to the Supreme Court of the State of Tennessee wherein said Supreme Court rendered a final judgment

reversing and setting — the judgment of the Court of Civil
79 Appeals which had been rendered in favor of petitioners and thereupon adjudged and decreed that the decree of the said Chancery Court of Shelby County Tennessee, as hereinbefore set out in this petition, was correct and affirmed the same in all things. So that by said affirmance of said decree of said Chancery Court of Shelby County, Tennessee, it was made the final judgment or decree of the highest Court, the said Supreme Court of the State of Tennessee.

Fourth. That it was adjudged by said Supreme Court by its said final judgment as before set out and explained, in the above entitled matter or cause, there was no provisions under the statutes of the State of Tennessee nor in the administration of the laws of said state, whereby ex-slaves, brothers and sisters, can inherit the one from the other, in any case, under the existing laws and that there is no collateral inheritance between persons of color who are ex-slaves and that in so holding the court decided that there is no inheritable blood or collateral inheritance between persons of color, who are ex-slaves. The provisions of the statutes of the State of Tennessee found in sections 4163 of Shannon's Compilations of the laws of the State of Tennessee same being the acts of the Legislature of the State of Tennessee enacted in 1841-42 Chapter 171 and carried into the Code of 1858, Section 2420, read as follows:

"If the estate was acquired by the intestate and he died without issue, his land shall be inherited—

By his brothers and sisters of the whole and half blood, born before his death or afterwards, to be divided amongst them equally.

And if any such brother or sister died in the intestate's life
80 time, leaving issue, such issue shall represent their deceased parent, and be entitled to the same part of the estate of *of* the uncle or aunt as their father or mother would be entitles to if living."

That by the above statutes of the state of Tennessee and by the decisions of the Supreme Court of said State in construing same, free white persons do inherit, collaterally real property of brother and sisters when one dies intestate without issue; and that said Supreme Court of the State in determining said matter or Cause as shown by said final judgment or decree herein set out necessarily adjudged that colored persons because born in days of slavery had no inheritable blood to inherit collaterally and that said decision or holding of the Court was not in violation of the 14th Amendment of the Constitution of the United States and of the said revised statutes of the United States passed by Congress to carry into effect — amendment which said revised statutes read as follows:

"SEC. 1977. All persons within the jurisdiction of the United States shall have the same right in every state and Territory to make and enforce contracts, to sue, to be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes licenses, and exactions of every kind, and to no other."

"SEC. 1978. All citizens of the United States shall have the same

right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Fifth. That all slave marriages were legalized and colored persons who were slaves living together as husband and wife in this state while in a state of slavery are *are* declared to be man
81 and wife and their childres legitimat-ly entitled to inherit property the same as the whites. The said enactment being the acts of the legislature of the State of Tennessee of 1865-66. Ch. 40.

Sixth. That since it is determined and adjudged by said decree that the brothers and sisters of John Jones deceased the former husband of the defendant in error, Margurite Jones, cannot inherit the real property of the said John Jones deceased, as such brothers and sisters, because they are all ex-slaves, therefore this petitioner is deprived of civil rights and there is a descrimination against persons of color, because of race, color or previous condition of servitude, as white persons can and do inherit under like circumstances and conditions according to the construction of the afor-said state statu-es by the highest court of law or equity in the state and this violates said sections 1977 and 1978 of the revised statu-es of the United States and the provisions of the 14th Amendment to the Constitution of the United States. That said judgment, decree or final decision of the state of Tennessee deprives petitioner and petitioner's immediate vendors, brothers and sisters of John Jones deceased, of Civil rights and also privileges and immunities of the 14th Amendment of the Constitution of the United States and also deprives them of the equal protection of the laws and the Civil rights of inheritance of real property, as provided by the acts of Congress found comp*l*ied in the said revised statutes of the United States in said sections 1977 and 1978 herein set forth in this petition.

Seventh. That since it is determined and adjudged by said final judgment or decree of said Supreme Court of the State,
82 that the brothers and sisters of John Jones deceased, former husband of Margurite Jones, the defendant in error, cannot inherit the real property of their brother, John Jones, because all them were ex-slaves, being born in the days of slavery and as it is true that white brothers and sisters do inherit from each other, and as the petitioner, Will Jones, has his title and right to the real property described herein, through deeds of conveyance from said brothers and sisters of said John Jones deceased, therefore the said brothers and sisters of said John Jones, deceased, through whom petitioner claims a right to this property are deprived of Civil Rights claimed and given under the said 14th Amendment of the Constitution of the United States and the Civil rights provided for by sections 1977 and 1978 of the revised statutes of the United States hereinbefore set out, and that by said final decision or judgment and adjudication, the said Federal Statutes were necessarily involved and drawn in question by said final judgment or decree of said Supreme Court of the State of Tennessee and said final judgment was against petitioner and in contravention of said right claimed

under said statutes of the United States and said Amendment to the Constitution of the United States.

All of which appears in the record, opinion and final judgment of said Supreme Court of the State of Tennessee whereby manifest error has happened to the great damage of your petitioner.

Wherefore, your petitioner prays for the allowance of a
83 writ of error from the Supreme Court of the United States to the Supreme Court of the state of Tennessee and the judges thereof, to the end that the record in said matter or cause may be removed into the Supreme Court of the United States and the errors complained of by your petitioner may be removed and corrected and said judgment be reversed and that such judgment be rendered by this Court to which he is entitled under the law as to said real property and for which he will ever pray.

WILL JONES, *Petitioner.*

S. L. COCKROFT AND
BANKS & HARRELSON,
Attorneys for Petitioner.

Filed Jun- 27th, 1912. T. B. Carroll, Clerk, by —— ——, D. C.

84 The Supreme Court of the State of Tennessee.

WILL JONES, Appellant and Plaintiff in Error,
vs.
MARGUERITE JONES & Husband, ALBERT JONES, Appellees and Defendant- in Error.

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the state of Tennessee, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be, and is hereby, allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner, be, and the same is hereby, approved.

JNO. K. SHIELDS,
Chief Justice of the Supreme Court of the State of Tennessee.

Filed Jun- 27th, 1912. T. B. Carroll, Clerk, by —— ——, D. C.

85 STATE OF TENNESSEE:

In the Supreme Court of the State of Tennessee.

No. 17, Shelby Chancery.

WILL JONES, Appellant and Plaintiff in Error,
vs.
MARGURITE JONES & Husband, ALBERT JONES, Appellees and Defendants in Error.

Bond for Damages and Costs of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Tennessee.

Know all men by these presents, that we, Will Jones as principal and *the* The United States Fidelity & Guaranty Co., of Baltimore, Md. as surety are held and firmly bound unto the above named Margurite Jones and husband Albert Jones in the sum of one Thousand ($1,000.00) Dollars, to be paid to the said Margurite Jones and husband Albert Jones for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, successors, assigns and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 19th day of June in the year of our Lord, One Thousand Nine Hundred and Twelve.

Whereas the above named appellant and plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Tennessee.

86 Now, therefore, the condition of this obligation is such that if the above named appellant and plaintiff in error shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

WILL JONES.
THE UNITED STATES FIDELITY &
GUARANTY CO. OF BALTIMORE, MD.,
By S. M. WILLIAMSON, [SEAL.]
Ag't & Att'y in Fact.

I hereby approve the above and foregoing bond and surety this the 19 day of June, 1912.

JNO. K. SHIELDS,
Chief Justice of the Supreme Court of the State of Tennessee.

Filed June 27, 1912. T. B. Carroll, Clerk.

87 To Marguerite Jones and her husband, Albert Jones, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C. within 30 days from the date hereof, pursuant to writ of error in the Clerk's office of the Supreme Court of the State of Tennessee wherein Will Jones, is appellant *a* and plaintiff in Error and you are appellees and defendants in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in the- behalf.

Witness the Honorable John K. Shields, Chief Justice of -he Supreme Court of the state of Tennessee, this the — day of June 1912 in the year of our Lord Nineteen Hundred and Twelve.

JNO. K. SHIELDS,
Chief Justice of the Supreme Court of the State of Tennessee.

Service of the above notice and citation is hereby acknowledged, this the 22nd day of June 1912, and the said Margurite Jones and her husband Albert Jones, hereby enter their appearance.

B. F. BOOTH,
Att'y for Margurite & Albert Jones.

Filed June 27, 1912. T. B. Carroll, Clerk, by —— ——, D. C.

88 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Tennessee, Greeting:

Because in the record and proceedings as also in the rendition of the judgment, of a plea which is in the said Supreme court of the State of Tennessee, before you, or some of you, being the highest court of law or Equity in the said State in which a decision could be had in said suit between Will Jones and Marguerite Jones and her husband Albert Jones, wherein was drawn in question the validity of a statute of, or an authority exercised under the United States and the decision was against their validity or wherein was drawn in question the validity of a statute of, or an authority exercised under said State on the ground of their being repugnant to 14th Amendment to the Constitution of the United States and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the said 14th Amendment of the Constitution of the United States or Statute- of the United States, and the decision was against the title, right, privilege, specially set up or claimed, under such clause of the 14th Amendment to the Constitution of the United States and statutes of the United States, a manifest error hath happened to the great damage of the said Will Jones, as by his complaint appears, we being willing that error, if any hath been made, should be duly corrected and a full

and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and pro-
89 ceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ so that you have the same at Washington, D. C. within 30 days from this date in said Supreme Court of the United States to be then there held that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable E. D. White, Chief Justice of the Supreme Court of the United States and the seal of the said District Court, this the 20th day of June, A. D. 1912.

[SEAL.] A. G. MATHEWS, *Clerk*.

Filed Jun- 27, 1912. T. B. Carroll, Clerk, by —— ——, D. C.

90 *Assignments of Error from Supreme Court of United States to State Court.*

The Supreme Court of the State of Tennessee.

WILL JONES, Plaintiff in Error,

vs.

MARGURITE JONES and Husband, ALBERT JONES, Defendant- in Error.

Now comes the said plaintiff in error and respectfully submits that in the record proceedings, decision and final judgment of the Supreme Court of the State of Tennessee in the above entitled matter there is ma*m*ifest error in this to-wit:

First: The Court erred in holding that the provisions of the statutory laws of the state of Tennessee as compiled in Shannon's Code section 4163 and sub-section two thereof, as construed and interpreted by the Supreme Court of said state by which free white persons inherit real property collaterally, while persons of color who are ex-slaves and who have been in a previous condition of servitude, cannot and do not inherit in the same way and manner, are not in conflict with and in violation of the 14th Amendment to the Constitution of the United States and also are not in violation of sections 1977-78 of the United States compiled revised statutes of 1901, for that the State of Tennessee by and through the provisions of the said statutory laws of Tennessee in said section 4163, sub-section two of Shannon's Code as construed and interpreted by the Supreme C*o*urt of the State of Tennessee, assumes and seeks:

91 (1) To deprive the plaintiff in error and certain other citizens of the United States and the State of Tennessee of rights, privileges and immunities secured to other citizens of the United States and of said state.

(2) To deprive and deny the plaintiff in error and other citizens of the United States and within the jurisdiction of the State of Tennessee the equal protection of the law, as to the right of inheritance of real property.

(3) To deprive the plaintiff in error and those, by, through*t* and under whom he claims the real property in question and other citizens of the United States and of the State of Tennessee, of certain civil rights guaranteed to them by the said revised statutes of the United States of 1901 in section- 1977-78, passed by Congress of the United States to enforce and carry out the provisions of the said 14th Amendment of the Federal Constitution of the United States and thereby to secure t*p* persons of color, ex-slave, the same civil rights as that enjoyed by free white persons.

Second: The Court erred in holding that the provisions of the statutes of the State of Tennessee, to the effect that free white persons have the right to inherit real property from a brother or sister who dies intestate, without issue, while at the same time and under the same conditions persons of color, ex-slaves brothers and sisters, who may die intestate without issue, do not unlawfully discriminate in favor of free white persons as against persons of color who had been in previous condition of servitude and who are ex-slaves, and that said state statutes, as thus construed and interpreted by the highest court of law or equity in the state of Tennessee, do not violate the 14th Amendment to the Constitution of the
92 United States and the Federal Statutes hereinbrfore referred to and set out.

Third: The Court also erred in holding that said state statutes and law of collateral inheritance, according to the construction and interpretation given same by the Supreme Court of the State of Tennessee. and the authority exercised thereunder and thereby authorized to be exercised thereunder, as determined by the said final decision of the said highest court of the state, does not deprive persons of color, who are ex-slaves, of certain civil rights as to real property and the inheritance of the same, although said rights are at the same time conferred, granted and given to free white persons and denied to ex-slave colored persons; and that in so holding or construing said state statutes there is no violation of said sections 1977-78 of the said revised statutes of the United States of 1901 and the 14th Amendment *ot* the Constitution of the United States for *t*the enforcement of which said acts of Congress were enacted:

Fourth: That the court — in holding that by the interpreta-ion placed upon section 4163 sub-section two of Shannon's compilation of the statutory laws of the state of Tennessee, by the Supreme Court of the State of Tennessee, is not contrary to and in violation of and in contravention of the rights claimed under and by virtue of the said revised statutes of the United States as found in said sections 1977-78 and also not in violation of the laws and Constitution of the United States and especially the 14th Amendment thereof.

93 Plaintiff in error says that in the aforesaid suit proceedings and final adjudication there was drawn in question and

necessarily involved what is called the Civil Rights act passed by the Congress of the United States, compiled in sections 1977-78 of the United States compiled statutes of 1901, since by the said final judgment of said Supreme Court of the State of Tennessee it was held that under and by virtue of the laws of the state of Tennessee, in substance and effect, while free (white) persons can and do inherit real property collaterally, as next of kin, that persons of color, who are ex-slaves cannot and do not have any such right conferred upon them as such under the laws of the state of Tennessee and hence the said decision and final judgment of said Supreme Court of the State of Tennessee is adverse to said Federal statutes of the United States aforesaid, which said Federal Statutes provide among other things that all citizens of the United States shall have the same rights in every state as are enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property. To which said decision the plaintiff in error hereby excepts and assigns the same in error.

Wherefore, the said Will Jones, plaintiff in error, prays that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught and that he may be restored to all things and rights which he had lost by the action and because of said judgment and decision.

S. L. COCKROFT AND
BANKS & HARRELSON,
Attorneys for Plaintiff in Error.

Filed Jun- 27, 1912. T. B. Carroll.

94 In the Supreme Court of Tennessee.

Number 17, Shelby Chancery.

WILL JONES, Plaintiff in Error,
vs.
MARGURITE JONES and Husband, ALBERT JONES, Defendants in Error.

Precipe.

The Clerk will prepare and certify a full, *ture*, and complete transcript of all the pleadings and exhibits attached thereto, the assignments of errors and all proceedings, entries, petitions, motions and papers on file, judgments and decrees in the above entitled cause, to be used in the trial of said cause in the Supreme Court of the United States on a Writ of Error from said Court to this Court.

In making out and preparing this transcript for the Supreme Court of the United States on this writ of Error, the record of the testimony, exceptions to same, and rulings of the Court on said exceptions to testimony and brief need not be copied. But all other

papers, proceedings, judgment, petitions, motions, orders and decrees will be copied.

S. L. COCKROFT AND
BANKS & HARRELSON,
Attorneys for Will Jones.

Filed June 27, 1912. T. B. Carroll, clerk, by ——— - ——, D. C.

95 In the Supreme Court of Tennessee.

STATE OF TENNESSEE,
County of Madison:

I, T. B. Carroll, Clerk of the Supreme Court of Tennessee do hereby certify *that* the above and foregoing to be a full, true and correct transcript of the record in the case of Will Jones, plaintiff in error, vs. Margerett Jones, et al., defendants in error, as required by the precipe and stipulations of counsel filed in this cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the State of Tennessee at office in the City of Jackson on this the 9 day of August, 1912.

[Seal Supreme Court of Tennessee, Western Division, Jackson.]

T. B. CARROLL,
Clerk of the Supreme Court of Tennessee,
By J. E. SPRINGBATT, *D. C.*

96 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Supreme Court of the State of Tennessee, before you, or some of you, being the highest Court of Law or Equity in the said State in which a decision could be had in said suit between Will Jones and Marguerite Jones and her husband Albert Jones, wherein was drawn in question the validity of a statute of, or an authority exercised under the United States and the decision was against their validity or wherein was drawn in question the validity of a statute of, or an authority exercised under said State on the ground of their being repugnant to — 14th Amendment to the Constitution of the United States and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the said 14th Amendment of the Constitution of the United States or statute of the United States, and the decision was against the title, right, privilege, specially set up or claimed, under such clause of the 14th Amendment to the Constitution of the United States and statutes of the United States, a manifest error hath happened to the great damage to the said Will Jones, as by his complaint appears, we being willing that error, if any hath been made, should be duly cor-

rected and a full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ so that you have the same at Washington, D. C. within 30 days from this date in said Supreme Court of the United States to be then and there held that, the record and procedings aforesaid being
97 inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable E. D. White, Chief Justice of the Supreme Court of the United States and the seal of the said District Court, this the 20 day of June, A. D. 1912.

[Seal of the District Court of the United States for the District of West Tennessee.]

A. G. MATHEWS, *Clerk.*

Filed Jun- 27, 1912. T. B. Carroll, Clerk, by —— ——, D. C.

98 To Marguerite Jones and her husband, Albert Jones, Greeting:

Your are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C. within 30 days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Tennessee wherein Will Jones, is appellant and plaintiff in Error and you are appellees and defendants in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John K. Shields, Chief Justice of the Supreme Court of the State of Tennessee, this the — day of June 1912 in the year of our Lord Nineteen Hundred and Twelve.

JNO. K. SHIELDS,
Chief Justice of the Supreme Court of the State of Tennessee.

Service of the above notice and citation is hereby acknowledged, this the 22nd day of June 1912, and the said Marguerite Jones and her husband Albert Jones, hereby enter their appearance.

B. F. BOOTH,
Attorney for Marguerite & Albert Jones.

Filed Jun- 27, 1912. T. B. Carroll, Clerk, by —— ——, D. C.

Endorsed on cover: File No. 23,349. Tennessee Supreme Court. Term No. 339. Will Jones, plaintiff in error, vs. Marguerite Jones and her husband, Albert Jones. Filed September 4, 1912. File No. 23,349.

STATEMENT OF FACTS

SUPREME COURT OF THE UNITED STATES

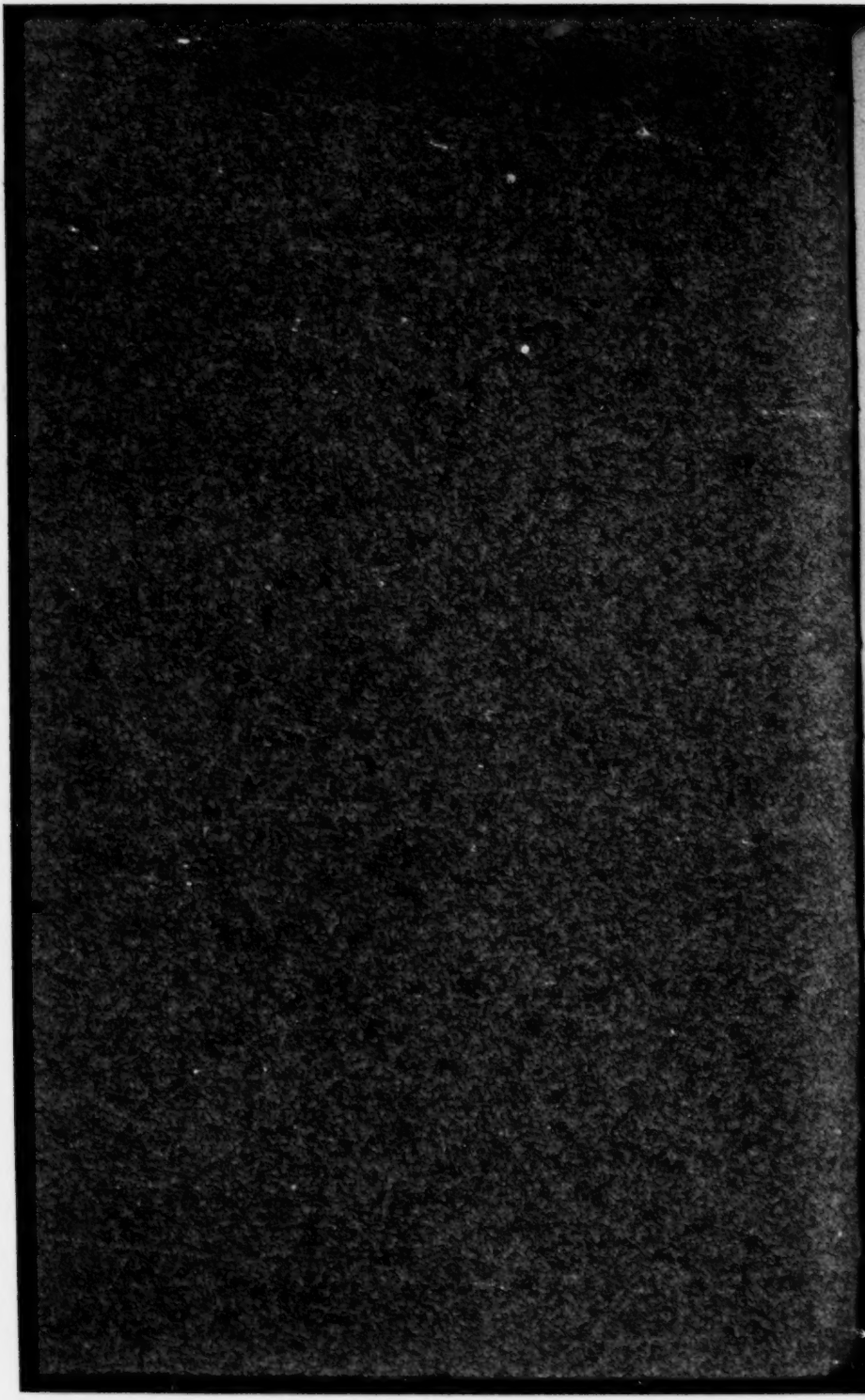
OCTOBER TERM, 1939

No. 130

[redacted]

[redacted]

[redacted]



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 339

WILL JONES, PLAINTIFF IN ERROR,

vs.

MARGUERITE JONES AND HER HUSBAND, ALBERT JONES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE

STATEMENT OF FACTS.

John Jones, an ex-slave, died in Shelby County, Tennessee, in 1899, seized and possessed of 87 acres of land in the northern part of Shelby County, dying intestate without children, but leaving brothers and sisters, being Arthur Jones, Pony Jones, Zack Jones, Joanna Cole, wife of John Cole; Frances Newman, wife of Jeff Newman. These parties are likewise ex-slaves, having been born in the days of slavery, but according to the records in this cause, they were brothers and sisters of John Jones. That both John Jones and his brothers and sisters were ex-slaves.

That John Jones intermarried before his death with the complainant, Marguerite Jones, but no children were born to this marriage or to any former marriage of John Jones, he leaving no children by this marriage or a former marriage.

In this cause Marguerite Jones, the widow of John Jones, claims by reason of the fact that John Jones died intestate and without leaving issue, that under the statutes she was entitled to the 87 acres of land in question, by reason of a certain statute in Tennessee rather than have the property escheat to the State for the benefit of the school fund.

After the death of John Jones and before the bill in this particular case was filed and on or about the 5th day of April, 1909, the plaintiff in error, Will Jones, in this case, secured quit claim deeds from Martha Jones, Pony Jones, Zack Jones, Joannah Cole and her husband, John Cole; Frances Newman and her husband, Jeff Newman, who were the brothers and sisters of John Jones, owner of the land in controversy, all of whom were born in the days of slavery, as shown by the record in this case, and there is no question raised as to their ability to inherit the property from John Jones, except that they were born in the days of slavery.

It seems that some time after the death of John Jones, Marguerite Jones intermarried with Albert Jones, both of whom are residents of Shelby County, Tennessee, and that on or about the 8th day of February, 1909, they filed a bill in the Chancery Court to oust Will Jones from possession of any portion of this land, although there had been an agreement between Will Jones and Marguerite Jones, by the terms of which Will Jones was to have the peaceable possession of twenty acres of the land in question. (Record, page 1.)

In this particular case the Chancellor decreed that Marguerite Jones was only entitled to homestead and dower as provided for under the statutes of the State of Tennessee, and it was so ordered and decreed by the Court. (Record, pages 15 and 16.)

The complainant, Marguerite Jones and her husband, Albert Jones, appealed the case to the Supreme Court, but failed to assign errors, and the decree of the Chancellor was, therefore, affirmed and on June 13, 1910, Marguerite Jones and her husband, Albert Jones, filed a bill in the Chancery Court in the nature of a bill of review. (Record, pages 1 to 4, inclusive.)

Attached to this bill was Exhibit "A," beginning with record, page 5 to page 17, inclusive, to this bill of review. The then defendant, or plaintiff in error, Will Jones, filed certain pleas and answer in the cause. The cause was heard before the Chancellor, who gave the relief prayed for in the bill. (Record, pages 28-9.)

Will Jones, feeling aggrieved as to the decree, appealed the case to the Court of Civil Appeals, which said Court reversed the decree of the Chancellor. (Record, pages 33 and 34.)

The then complainant, Marguerite Jones, and her husband Albert Jones, took the case by *certiorari* and *supersedeas* to the Supreme Court, the same being the highest Court in the State of Tennessee, in which a final decree was entered affirming the decree of the Chancellor. Record, pages 33 and 34.

That part of the decree of the Chancery Court of which Will Jones complains and is aggrieved and which said decree was fully and in all things affirmed by the Supreme Court of the State of Tennessee, being the highest Court of the said State, is as follows:

> "It also further appears from the proof that said John Jones, his living brothers and sisters, deceased were ex-slaves, and that Poney Jones, Arthur Jones, Zack Jones, Johanna Cole and Francis Newman, who made the deeds of conveyance to the defendant, Will Jones, were born in the days of slavery and are ex-slaves, and hence have no inheritable blood, title or interest in said land as such under the law and that said conveyance by deed of the aforesaid real property to the defendant are void and of no effect."
>
> "It is, therefore, adjudged and decreed by the Court that said deeds be set aside, cancelled and removed as a cloud on complainants' title, and that complainant, Marguerite Jones, be vested with the title in fee to said lands hereinbefore described and that the defendant be enjoined from interfering with her in her possession and enjoyment of same as the absolute owner thereof; and that she recover of the defendant all costs accrued herein, for which execution may issue." (Record, page 29.)

That on May 20, 1912, after a final decree as herein set forth was entered in said cause by the Supreme Court of the State of Tennessee affirming in all things the decree of the Chancellor as herein set forth, the then defendant and plaintiff in error, Will Jones, filed a petition in the Supreme Court of the State of Tennessee to rehear on certiorari and supersedeas, which petition was denied by said court (Record,

pages 34 and 35), and final decree was entered in said petition to rehear said cause, denying said petition and entering a final decree thereon and again in all things affirming the decree of the Chancellor.

That thereupon the then defendant, Will Jones, and now plaintiff in error, filed in the Supreme Court of Tennessee a petition for writ of error from the Supreme Court of the United States to the Supreme Court of Tennessee. (Record, pages 37 to 41, inclusive.)

That the Supreme Court of the State of Tennessee, through its Chief Justice, Mr. John K. Shields, granted said writ of error. (Page 41.)

That the plaintiff in error, Will Jones, thereupon filed his assignments of error (Record, pages 44 to 46, inclusive), and complains and allges that the decree of the Chancellor and which said decree was fully and in all things affirmed by the Supreme Court of the State of Tennessee and which said decree recites and denies persons of color who were born in the days of slavery and are ex-slaves the right of collateral inheritance or to inherit from their brothers and sisters. In other words, Will Jones complains to that part of the decree of the Supreme Court of the State of Tennessee, which said court is the highest court and the court of last resort in said State, which reads as follows:

> "That said John Jones, his living brothers and sisters, of deceased were ex-slaves and that Pony Jones, Arthur Jones, Zack Jones, Johanna Cole and Frances Newman, who made the deeds of conveyance to the defendant, Will Jones, were born in the days of slavery and are ex-slaves, and hence have no inheritable blood, title or interest in said land as such under the law."

Complainant in error allges that said decree is contrary to the 14th maendment to the Constitution of the United States, and that said decree is void by reason of the fact that it deprives ex-slaves of their civil rights as given and guaranteed to them under the 14th amendment to the Constitution of the United States and Civil Rights Bill as passed by Congress of the United States.

The plaintiff in error therefore has appealed the said cause to this Court and has submitted the following assignments of error. (Record, page 44.)

ASSIGNMENTS OF ERROR.

"Now comes the said plaintiff in error and respectfully submits that in the record proceedings, decision and final judgment of the Supreme Court of the State of Tennessee in the above entitled matter there is manifest error in this, to-wit:

First: The Court erred in holding that the provisions of the statutory laws of the State of Tennessee as compiled in Shannon's Code, Section 4163 and subsection 2 thereof, as construed and interpreted by the Supreme Court of said State, by which free white persons inherit real property collaterally, while persons of color who are ex-slaves and who have been in a previous condition of servitude, cannot and do not inherit in the same way and manner, are not in conflict with and in violation of the 14th amendment to the Constitution of the United States and also are not in violation of Sections 1977-78 of the United States compiled revised statutes of 1901, for that the State of Tennessee by and through the provisions of the said statutory laws of Tennessee in said section 4163, sub-section 2 of Shannon's Code as construed and interpreted by the Supreme Court of the State of Tennessee, assumes and seeks: (1) to deprive the plaintiff in error and certain other citizens of the United States and the State of Tennessee of rights, privileges and immunities secured to other citizens of the United States and of said State.

(2) To deprive and deny the plaintiff in error and other citizens of the United States and within the jurisdiction of the State of Tennessee the equal protection of the law as to the right of inheritance of real property.

(3) To deprive the plaintiff in error and those, by, through and under whom he claims the real property in question and other citizens of the United States and of the State of Tennessee, of certain civil rights guaranteed to them by said revised statutes of the United States of 1901 in Section 1977-78, passed by Congress of the United States to enforce and carry out the provisions of the said 14th amendment of the Federal Constitution of the United States and thereby to secure

to persons of color-ex-slave, the same civil rights as that enjoyed by free white persons.

Second: The Court erred i nholding that the provisions of the statutes of the State of Tennessee, to effect that free white persons have the right to inherit real property from a brother or sister who dies intestate, without issue, while at the same time and under the same conditions persons of color, ex-slaves, brothers and sisters, who may die intestate without issue, do not unlawfully discriminate in favor of free white persons as against persons of color who had been in previous condition of servitude and who are ex-slaves, and that said State statutes, as thus construed and interpreted by the highest court of law and equity in the State of Tenneseee, do not violate the 14th amendment to the Constitution of the United States and the Federal satutes hereinbefore referred to and set out.

Third: The Court erred in holding that said State statutes and law of collateral inheritance according to the construction and interpretation given same by the Supreme Court of the State of Tennessee, and the authority exercised thereunder and thereby authorized to be exercised thereunder, as determined by the said final decision of the said highest court of the State, does not deprive persons of color who are ex-slaves of certain civil rights as to real property and the inheritance of same, although said rights are at the same time conferred, granted and given to free white persons and denied to ex-slaves, colored persons; and that in so holding or construing said State statutes there is no violation of said Sections 1977-78 of the said revised statutes of the United States of 1901 and the 14th amendment of the Constitution of the United States, for the enforcement of which said acts of Congress were enacted.

Fourth: That the Court, in holding that by the interpretation placed upon Section 4163, sub-section 2, of Shannon's compilation of the statutory laws of the State of Tennessee, by the Supreme Court of the State of Tennessee, is not contrary to and in violation of and in contravention of the rights claimed under and by virtue of the said revised statutes of the United States as found in Section 1977-78, and also not in violation of the laws and Constitution of the United States and especially of the 14th amendment thereof. Plaintiff in error says that in the aforesaid suit proceedings and final adjudication there was drawn in question and necessarily involved what is called the Civil Rights

Act, passed by the Congress of the United States, compiled in Sections 1977-78 of the United States compiled statutes of 1901, since by the said final judgment of said Supreme Court of the State of Tennessee it was held that under and by virtue of the laws of the State of Tennesseee, in substance and effect, while free (white) persons can and do inherit real property collaterally, as next of kin, that persons of color, who are ex-slaves, cannot and do not have any such right conferred upon them as such under the laws of the State of Tennessee, and hence the said decision and final judgment of said Supreme Court of the State of Tennessee is adverse to said Federal statutes of the United States aforesaid, which said Federal states provide among other things that all citizens of the United States shall have the same rights in every State as are enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property. To which said decision the plaintiff in error hereby excepts and assigns the same in error.

Wherefore, the said Will Jones, plaintiff in error, prays that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught and that he may be restored to all things and rights which he had lost by the action and because of said judgment and decision.

BRIEF AND ARGUMENT.

The assignments of error in this case probably might be treated as one, as there is but one question actually involved in this lawsuit, and that is whether or not ex-slaves, or people who were born in the days of slavery, are entitled to inherit from their brothers and sisters, who were likewise ex-slaves, and whether or not the mark of bondage will still remain upon the poor, unfortunate colored race, who served so faithfully their masters before the Emancipation Proclamation by Mr. Lincoln, and who in fact to this good day are as faithful to the white man as they were in the days of slavery.

According to the laws of our State, white people, or free-born citizens, are entitled to inherit collaterally, and have been so entitled for many years past, since 1841, being Chapter 171, Section 3, of the acts of the General Assembly of the State of Tennessee, which is compiled in Shannon's Code under Section 4163, as follows, to-wit:

> "If the estate was acquired by the intestate and he died without issue, his land shall be inherited: First, by his brothers and sisters of the whole and half blood born before his death or afterwards, to be divided among them equally, and if any such brother or sister died intestate in his lifetime, leaving issue, such issue shall represent their deceased parent and be entitled to the same part of the estate as the uncle or aunt and their father or mother would have been entitled to if living."

It will readily be seen by the Court that free or white people have been enabled to inherit since 1841. In fact, they have been so entitled since 1796, as shown by Chapter 14, Section 1, of the acts of our Legislature of 1796, and brought into Shannon's Code *supra*.

The Legislature nor the Supreme Court of our State has a right to deprive the ex-slave of the same civil right as white people enjoy, but this is exactly what the Supreme Court has done in the case, the Court having said that the brothers and sisters of John Jones, by and through whom he, Will Jones, claims the title of the lands in question, being ex-slaves, possess no inheritable blood and could not inherit collaterally.

The decision is contrary to the 14th amendment of the Constitution of the United States and is also contrary to the Civil Rights Bill, passed in support and aid thereof, and is also contrary to the decisions of the Supreme Court of the United States, which are herein cited and referred to, and in conflict and violation of the acts of Congress and the 14th amendment, and also in violation of Sections 1977-78 of the United States compiled revised statutes of 1901 in that the State of Tennessee by and through the provision of the said statutory laws of said State of Tennessee of said Section 4163, subsection 2, of Shannon's Code, as construed and interpreted by the Supreme Court of the State of Tennessee, it assumes and seeks:

1. To deprive the plaintiff in error and certain other citizens of the United States and of the State of Tennesse of rights, privileges and immunities secured and guaranteed to other citizens of the United States and of said State.

2. To deprive and deny the plaintiff in error and other citizens of the United States the rights and privileges granted and guaranteed to them by the Constitution of the United States and the 14th amendment thereof, and thereby secure to persons of color or ex-slaves the same civil rights as that enjoyed by free white persons.

As a matter of fact, under the laws of the State of Tennessee, as we understand it, ex-slaves can inherit, but not as construed by the Supreme Court of our State, being the act of the Legislature of the State of Tennessee of 1865-66, subsection 2, reads as follows:

> "Be it further enacted that persons of color have the right to make and enforce contracts, to sue and be sued, to be parties and give evidence, to inherit, and to have full and equal benefits of all laws and proceedings for the security of persons and estate and shall not be subject to any other or different punishment, pains or penalty, for the commission of any act or offense, than such as are prescribed for white persons committing like acts or offenses."

However this may be, the Supreme Court of the State has decided that persons born in bondage or in the days of slavery possess no inheritable blood and cannot inherit collaterally, and such decision and holding of the Court is a violation of the 14th amendment of the Constitution of the United States and of the revised statutes of the United States, Section 1977-78.

> "All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, to be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, license and exactions of every kind, and to no other.
>
> Section 1978. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit purchase, lease, sell, hold and convey real and personal property."

In the case of *Strauder v. W. Va.*, the Court says in part:

> "It is designed to assure to the colored race the enjoyment of all the civil rights that under the laws are enjoyed by white persons, and to give to that race the protection of the general government, in that enjoyment whenever it should be denied by the States. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws and authorized Congress to enforce its provisions by appropriate legislation."
>
> "What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them."

Also, in the case of *Plessy v. Ferguson*, 163 U. S., the Court says:

> "By the 14th amendment, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are made citizens of the United States and of the State wherein they reside; and the States are forbidden from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or shall deprive any person of life, liberty or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws."
>
> "The proper construction of this amendment was first called ot the attention of this Court in the *Slaughter-house* cases, 16 Wall 36, which involved, however, not a question of race, but one of exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the negro; to give definitions of citizenship of the United States and of the States, and to protect from the hostile legislation of the States the privileges and immunities of citizens of the United States, as distinguished from those citizens of the States."
>
> "Positive rights and privileges are undoubtedly secured by the 14th amendment; but they are secured

by way of prohibition against State laws, proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibitions into effect; and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect."

"But that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the 14th amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty, by declaring that 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,' and that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without the process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil right, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race."

In this case the highest tribunal of our State has not only deprived the colored man of his civil rights, but have done so solely and alone on the ground that they were ex-slaves. Therefore, our Supreme Court has not only denied to a certain class, known as the colored race, because they were born in the days of slavery, their civil rights, in that our Supreme Court has said that they were not entitled to inherit, they having been born in the days of slavery, possess no inheritable blood. It seems as if our Court was not color-blind, but had a very keen eye and has gazed upon the poor, unfortunate slave in such an unfavorable manner, and they have said to him: "You were born in the days of slavery and you are col-

ored, and we propose to put a brand on you that will go with you certainly through this life, and if not through eternity."

In the case of *Gibson v. Mississippi*, 162 U. S., the Court says:

> "To guard the previously subjected race from the effect of discrimination these provisions are made a part of the fundametnl law of the land, and their rights were placed under the protection of the Federal Government. It was designed to assure the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give that race the protection of the Federal Government in that enjoyment, when it should be denied by the States. *Slaughter-house* cases." Citing 16 Wall. 67.

The Court further says:

> "The guarantees of life, liberty and property are for all persons, within the jurisdiction of the United States, or of any State without discrimination against any because of their race. Those guarantees, when their violation is properly presented in the regular course of proceedings, must be enforced in the courts, both of the nation and of the State, without reference to considerations based upon race. In the administration of criminal justice no rule can be applied to one class which is not applicable to all other classes. The safety of the race the larger part of which was recently in slavery, lies in a rigid adherence to those principles. Their safety—indeed, the peace of the country and the liberties of all—would be imperilled, if the judicial tribunals of the land permitted any departure from these principles based upon discriminations against a particular class because of their race."

In the case of *Neal v. Delaware*, 103 U. S. 389, the Court speaking through Mr. Justice Harlan, says in part:

> "The question thus presented is of the highest moment to that race, the security of whose rights of life, liberty and property, and to the equal protection of the laws, was the primary object of the recent amendments to the national Constitution. Its solution is confessedly attended by many difficulties of a serious nature, which might have been avoided by more explicit language in the statutes passed for the enforcement of the amendments."

In the case of *Strauder v. W. Va.*, Mr. Justice Strong in delivering the opinion of the Court, says in part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdictnon equal protection of the laws."

The Court further says:

> "It was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general Government in that enjoymen, whenever it should be denied by the States. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws, and authorized Congress to enforce its provisions by appropriate legislation."
>
> "What is this but declaring that the law in the States shall be the same for the black as for the white?; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?"

The Court further says:

> "Fourteenth amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either of life, liberty, or property. Any State action that denies this immunity to a colored man is in conflict with the Constitution."

The fourteenth amendment as we understand it from reading the various opinions of this Court, was ordained to secure

equal civil rights to all persons, and extends its protection to races and classes and prohibits any State legislation which has the effect of denying to any race or class or to any individual, the equal protection of the laws. 100 U. S. 339; 101 U. S. 22; 163 U. S. 537; 170 U. S. 212; 203 U. S. 1.

The plain object of this amendment, as well as of the statutes enacted pursuant thereto, was to place the negro race, with respect to his civil rights, upon the same level with the white They made the rights and responsibilities, civil and criminal, of the two races exactly the same. Citing same authorities as above.

We do not understand that the fourteenth amendment or the civil rights bill passed in aid of said amendment, was intended to abolish distinction based upon color, or to enforce social equality. This is not a case where social equality is undertaken to be enforced, but is a case where civil rights of persons of color or ex-slaves are attempted to be enforced. Were it a question of social equality it would be an entirely different proposition, but this is a question of civil rights, and we can find no authority where social equality between the classes should be enforced, but all authorities and all cases decided by this Honorable Court, have given to the negro race or to persons of color and to ex-slaves the same civil rights as are given to white people by the different States.

It is well settled now, however, that the protection extended by the fourteenth amendment is not confined to the negro race alone but may be invoked by all persons, regardless of their race or color, for the protection of their equal civil rights and to maintain their equality before the law, and with respect to the thirteenth amendment it reaches every race and every individual, and the slavery or involuntary servitude of the Mexican, Chinese, Italians or Anglo-Saxon are as much within its compass as slavery or involuntary servitude of the Africans. 16th Wall. 36; 203 U. S. 1.

Therefore, although a statute, on its face, may not be obnoxious to this provision of the fourteenth amendment, yet if it is so administered by the legislative, executive or judicial authorities of the State as to deny to any individual or class of individuals the equal protection of the laws and equal civil

rights under the laws, a case arises within the constitutional inhibition. Whoever by virtue of his public position under a State government deprives another of life, liberty or property without due process of law, or denies or takes away the equal protection of the laws, and violates that inhibition, or any act of legislative authority who undertakes to deprive any person or class of persons of their civil rights under the fourteenth amendment of the Constitution of the United States and the Civil Rights Bill passed by Congress in aid thereof, violates that inhibition, and as he acts in the name of and for the State and is clothed with her power, his act is her act, and Congress has the power by virtue of the fifth section of the fourteenth amendment to protect and enforce the rights denied or withheld. 100 U. S. 339; 103 U. S. 370; 100 U. S. 303.

The fourteenth amendment of the Constitution of the United States is one of a series of constitutional provisions having a common purpose; namely, to secure to a recent emancipated race, which had been held in slavery through many generations, all of the civil rights that the superior race enjoy, and to give to it the protection of the general government, in the enjoyment of such rights, whenever they should be denied by the States. That clause which forbids a State to deny to any person the equal protection of the laws was clearly intended to prevent the hostile discrimination against the negro race and also to prevent the hostile disrimination against ex-slaves, and to prevent the denial of their equal protection in their civil rights and to allow and guarantee to ex-slaves the same civil rights as given to white people. The negro race, so familiar in the States where he had been a slave, and for this purpose the clause confers ample power upon Congress to secure his rights and equality before the law. It not only gave citizenship and privileges of citizenship to persons of color and ex-slaves but denied to any State the power to withhold from them the equal protection of the laws, and to enforce protection of their civil rights.

Although prohibitory in terms, it confers by necessary implication a positive immunity, or right, most valuable to persons of the colored race—the right to exemption from discrimination, imposed by public authority, which imply legal inferiority in civil society, lessen the security of their rights,

and are steps towards reducing them to the conditions of a subject race—the right to exemption from unfriendly legislation against them distinctively as colored. 100 U. S. 303.

Colored persons are citizens, and citizens without distinction as to race or color, or previous condition of servitude, and have the same right to make and enforce contracts, to sue, to be parties and give evidence, to inherit, purchase, lease and sell, hold and convey property real and personal, and to full and equal benefit of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens, and are entitled to the same civil rights as the white citizens of the different States wherein they may reside. 95 U. S. 485.

As stated in the outset this is not a question of social rights between the colored and the white race, but the question involved in this case is a question of civil rights. As heretofore shown white citizens of the State of Tennessee have been able to inherit collaterally under our laws both real and personal property, the first act being passed by the Legislature of our State in 1796 and amended 1841, and persons of color not ex-slaves have been allowed to inherit collaterally since that date, but our Supreme Court has sought to put a brand on the poor unfortunate colored man, who was forced into involuntary servitude against his own will, and who served his master for many years without compensation except food and raiment and in many instances both food and raiment were exceedingly scant, and now for the court of last resort of our own State, which before the war was a slave State, to brand this poor unfortunate race with a mark that he was an ex-slave, could have no property rights, no inheritable or transmissable blood, is in absolute violation of the fourteenth amendment to the Constitution of the United States and the Civil Rights Bill passed in aid thereof. As we understand the fourteenth amendment and the Civil Rights Bill, it is intended to place every class of citizens with respect to their civil rights on the same level, and in the same condition, and that no person or class of persons shall be allowed to have and enforce their civil rights otherwise or different from any other class, or that they shall have special privileges over and above any other class of person either white or colored, be they ex-slaves

or what not. Or, in other words, as the framers of our Constitution has put it, "all men are born equal" and that no man is entitled to other than equal enforcement of his civil rights, and that all men, be he ex-slave or not, is entitled to inherit, and to the equal protection of the law in the State wherein he may reside, and it was for the protection not only of the colored race but for the protection of ex-slaves that the fourteenth amendment was enacted and the Civil Rights Bill was passed by Congress to enforce the same.

We therefore most earnestly insist that the brothers and sisters of John Jones, even though born in the days of slavery, that they have the same civil rights and that their rights and equal protection of the law was guaranteed to them by the Constitution of the United States and by the fourteenth amendment, and we most earnestly insist that this Court shall protect the unfortunate race in their civil rights as guaranteed to them by the Constitution of the United States and by the Civil Rights Bill passed by Congress and thereby and therefore, reverse the decision of our Supreme Court denying ex-slaves the right to inherit.

This Court in substance has said that the safety of the race, the safety of our country, the peace of our land and the rights of all would be imperilled, if the judicial tribunals of the land permitted any departure from those principles based upon discrimination against this particular class because of their race. Of course this refers to ex-slaves.

If a decision of this character is allowed to stand by this Court and the decision of our own State Court is affirmed by this Honorable Court, then it opens the leeway for discrimination and abuse of the rights and privileges to mankind, be he white or colored or whatever race he may belong to, and the discrimination against one class of people, white, colored, ex-slaves or what not, would imperil the liberties of our countrymen, and if judicial tribunal permitted such discrimination the safety of our people would be imperilled, and it would result disastrously both to the colored and the white race.

We therefore insist that the opinion of the Supreme Court, being the highest Court in the State of Tennessee, should be reversed and the case remanded and that a decree be entered

authorizing and allowing ex-slaves the right to inherit collaterally, or otherwise, and be given the same civil rights as are today and have been since 1796 given to the white race and to the colored race who have been born since the days of slavery and to hold that the Supreme Court of the State of Tennessee erred in not so holding.

Respectfully submitted,

W. H. HARRELSON,

Attorney for Will Jones, Plaintiff in Error.

BANKS & HARRELSON

and

W. P. METCALF, of Counsel.

APR 27 1914
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 339

WILL JONES, PLAINTIFF IN ERROR,

vs.

MARGUERITE JONES AND HER HUSBAND, ALBERT JONES.

REPLY BRIEF OF PLAINTIFF IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

W. H. HARRELSON,
Attorney for Will Jones, Plaintiff in Error.

BANKS, BOALS & HARRELSON
and
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REPLY BRIEF OF PLAINTIFF IN ERROR.

There seems to be no dispute as to the facts in this case, between the counsel for the plaintiff in error and defendant in error. The only difference that seems to exist between the counsel for plaintiff in error and defendant in error seems to be the question of collateral inheritance between ex-slaves or persons of color, having been born in the days of slavery.

We have examined the authorities cited by the defendant in error, and if we can understand or construe the English Language, they have absolutely no application to the questions involved in the case at bar. We presume, however, that he is undertaking to show that ex-slaves are illegitimates (though he does not say so), and for this reason not entitled to inherit.

Slave marriages and the issue of such marriage, were made legitimate and their children legitimates by Express Statute of our State, and slave marriages were, by statute, made valid, and the issue of such marriage legitimate by the statutes of our State.

Chapter 40 of the Acts of 1865-66, being an act to define the term, "Persons of Color," and to declare the rights, of such persons, provides as follows:

(Sections two and five, inclusive.)

> "Section 2. Be it further enacted, That persons of color have the right to make and enforce contracts, to sue and be sued, to be parties and give evidence, to inherit, and to have full and equal benefits of all laws and proceedings for the security of persons and estate, and shall not be subject to any other or different punishment, pains or penalty for the commission of any act or offense, than such as are prescribed for white persons committing like acts or offenses."
>
> "Section 5. Be it further enacted, That all free persons of color who were living together as husband and wife in this State, while in a state of slavery, are hereby declared to be man and wife, and their children legitimately entitled to an inheritance in any property heretofore acquired, or that may hereafter be acquired by said parents, to as full an extent as the children of white citizens are now entitled, by the existing laws of this State."

Chapter 58 of the Acts of our Legislature of 1865-66 is an act to declare that slave marriages contracted and entered into during the late Rebellion and solemnized as the law directs are to all intents and purposes declared legal and the issue of such marriages to be declared legitimate.

Section one is as follows:

> "Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all marriages contracted and entered into during the late Rebellion, and duly solemnized as the law directs, be, and the same are hereby declared valid to all intents and purposes, and that the issue of said marriages are hereby declared legitimate, and that free persons of color be required to obtain license and have the rites of matrimony solemnized as now required for free white persons."

By the Act of the Legislature of Tennessee of 1869-70, Chapter 75, page 92, provides for the children and the descendants of colored persons, to inherit estate, real and personal, of their deceased parents, which reads as follows:

> "Section 1. Be it enacted by the General Assembly of the State of Tennessee, That in all cases of free persons of color or slaves owning real or personal estate, and hav-

ing, while slavery existed, departed this life, possessed of or having legal or equitable estate, the same shall descend and be distributed between the widow and their children or descendants or *next of kin, whether they were slaves or not at the death of the descendant, agreeable to the laws of descent and distribution provided for free persons.*

"Section 2. Be it further enacted, That the second section of the Act of 1865-66, Chapter 59, shall embrace and apply to real as well as personal estate, and the children of their descendants, or next of kin, shall inherit the estate of the descendants, as provided for free persons."

It will be readily seen by these Acts that slave marriages were declared valid in Tennessee and their children declared legitimate. There is no question raised by the defendant in error as to the legitimacy of the brothers and sisters of John Jones, to-wit: Pony Jones, Arthur Jones, Zack Jones, Johanna Cole and Francis Newman, who were brothers and sisters of John Jones, deceased, and the defendant in error has adopted the reasoning of the plaintiff in error, and agreed that the only question involved in this law suit is the right of ex-slaves to inherit collaterally. That is, the right of ex-slaves to inherit from their brothers and sisters.

The question as to whether or not the brothers and sisters of John Jones are legimates was not raised in the pleadings and the question cannot be raised here.

The record shows that the court has all the way through stated that Pony Jones, Arthur Jones, Zack Jones, Johanna Cole and Francis Newman, the brothers and sisters of John Jones, are legitimates, and the sole and only reason assigned for disallowing their claim or right to inherit is that they were born in the days of slavery, hence have no inheritable blood.

Defendant in error says that there has been no discrimination. If this is true, and there has been no discrimination as aganst ex-slaves, then we would have the court define the word "Discrimination." If this is not discrimination, then why not say that it would not be discrimination for our law makers to enact laws giving only the children of the rich, or the brothers and sisters of the rich, the right to inherit collaterally, or to deny the brothers and sisters of the rich, or the children of the rich, the right to collateral inheritance, or, in other words, to deprive a certain class of white people or colored people, or any other nationality, the right of collateral inheritance, because of some condition that may have existed,

over which they have no control, as certainly people, though they may be colored, were not born into slavery or involuntary servitude, of their own will or choice.

As we understand the Fourteenth Amendment to the Constitution of the United States, ex-slaves were made citizens of the United States, and have been given the same civil rights as are guaranteed to white persons of the different states, then is it possible to disturb such civil rights and to deprive them of the equal protection of the law and the same rights and protection as are given to white people.

The ex-slave is given the right to vote, to own property, to sue and to be sued, and having given the ex-slaves this right and made a citizen of the United States, then our contention is that he cannot be deprived of some other civil rights that are given to white people.

To sustain the decision of the Supreme Court of Tennessee in this case, said court being the highest court of our State, would be to uproot every foundation of our government, the safety of the people, indeed the peace of the country, and the liberties, rights and privileges of all would be imperilled, if this court, being the highest court of our land, should sanction or discriminate against the colored race, or any race, because they were unfortunately born in the days of slavery. To do so would be contrary to all the principles of free government, contrary to all principles of rights and justice, contrary to all the laws ever enacted of a sane body of law makers, and would properly subject the highest courts of our land to the criticism of the civilized world and call forth the righteous indignation of all right thinking people of our Union.

We repeat that after an examination of the authorities cited by the defendant in error, we are unable to see how the authorities thus cited have any bearing on the questions involved in this law suit.

The defendant in error says that citizens of a state are not citizens of the United States, and citizens of the United States are not citizens of the State. This is referred to on page 15 of defendant's brief. We are unable to reconcile such statements.

Ex-slaves are given citizenship. Ex-slaves are given the right of suffrage. Ex-slaves have been guaranteed not only under the Fourteenth Amendment to the Constitution of the United States, the rights and privileges, but have been made

citizens of the state wherein they reside and citizens of the United States, have the right to hold office, to serve on juries, and no State has a right to deprive them of such rights and privileges, where white citizens enjoy the same rights and privileges, and having been made citizens for one purpose, that is as to their civil rights, then our contention is that they are made citizens for all purposes with respect to their civil rights.

Mr. Justice Lurton, while on the Supreme Bench of our own State, in the case of *Brown vs. Cheatham*, 91 Tenn., page 97, says:

Quoting from *Andrews vs. Page*, 3rd Heisk. 668, says:

> "After reviewing the history of slavery in this State, and the status of the slave as a person in the light of the decisions of the Courts of this State, he summed up the antebellum law upon the subject of slave marriages in these words:
>
> "We hold that a marriage between slaves, with the assent of their owners, whether contracted in common law form or celebrated under the statute, always was a valid marriage in this State, and the issue of such marriages were not illegitimates."

Mr. Lurton further says:

> "Yet it by no means followed that slaves could not enter into *de facto* marriages to which many of the consequences of a statutory marriage attached."

There has been no question raised as to the validity of the marriage of the father and mother of John Jones, and his brothers and sisters. The question not having been raised in the State courts cannot be raised here. This has been decided by the State courts, and the brothers and sisters of John Jones have all the way through been treated by the State courts as legitimate.

We might further state that the Acts of the Legislature above cited have not been repealed and are still the laws of the State of Tennessee.

Therefore we most earnestly insist that under the laws of the State of Tennessee that ex-slaves or persons of color born in the days of slavery, having been made citizens of the State of their residence and citizens of the United States, are entitled to the same civil rights and protection as white persons

of the respective states wherein they reside, and are entitled to the equal protection of the laws of the respective states, and that the brothers and sisters of John Jones are entitled to inherit from their brother, John Jones, even though born in the days of slavery and being ex-slaves. Free born white persons are entitled and have been entitled to inherit collaterally since 1796, and that under the Constitution of the United States and the Civil Rights Bill, known as Chapter 1977-8, certainly persons of color or ex-slaves are given the same civil rights as are given to free white persons, and we therefore most earnestly insist that our Supreme Court, being the highest court in our State, erred in holding otherwise, and this court should reverse and remand the cause and hold that ex-slaves or persons of color born in the days of slavery are entitled to inherit from their brothers and sisters.

Respectfully submitted,

W. H. HARRELSON,

Attorney for Will Jones, Plaintiff in Error.

BANKS, BOALS & HARRELSON

and

W. P. METCALF, of Counsel.

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Office Supreme Court, U. S.
FILED
MAR 30 1914
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CLERK

NUMBER 339.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1913.

WILL JONES, PLAINTIFF IN ERROR,

VS.

MARGUERITE JONES AND HER HUSBAND, ALBERT JONES, DEFENDANTS IN ERROR.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

REPLY BRIEF OF DEFENDANTS IN ERROR.

B. F. Booth,
Counsel for Defendants in Error.

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THE CASE.

May It Please The Court:

The statement of facts as made by plaintiff in error, is based upon the pleadings, orders and decrees in the case, since the evidence was not printed in the record, as will appear from an examination of the record.

Defendants in error were not given an opportunity as provided by rules 8 and 10 of this court, to designate what they thought necessary to be incorporated in the transcript, nor were they given an opportunity to designate what portions of the transcript should be printed in the record. We mention this fact, because there are some inaccuracies in the statement of facts made by plaintiff in error. On page 2 of the brief of plaintiff in error, the following statement appears:

> "There is no question raised as to their ability to inherit the property of John Jones, except that they were born in the days of slavery."

On page 3 of the record, the following appears in the bill filed by defendants in error: "They have since discovered that they are not the brothers and sisters of her deceased husband, and took no interest in his said estate."

It is true, the decree of the Chancery Court incidentally refers to the parties as the brothers and sisters of John Jones, but there is no expressed adjudication of the question as to whether they are legitimate or illegitimate; fraud is also charged in the bill (Rec. 3).

THE ASSIGNMENTS OF ERROR.

The plaintiff in error has assigned four reasons why the Supreme Court of Tennessee erred in deciding this case against him, and in deciding it in favor of the defendants in error, and as suggested in the brief of plaintiff in error, we will treat them as one, as there is but one question involved in this case.

For convenience we will restate them here:

"FIRST. The court erred in holding that the provisions of the statutory laws of the State of Tennessee as compiled in Shannon's Code, Section 4163 and sub-section 2 thereof, as construed and interpreted by the Supreme Court of said State, by which free white persons inherit real property collaterally, while persons of color who are ex-slaves and who have been in a previous condition of servitude, cannot and do not inherit in the same way and manner, are not in conflict with and in violation of the 14th Amendment to the Constitution of the United States and also are not in violation of Sections 1977-78 of the United States compiled revised statutes of 1901, for that the State of Tennessee by and through the provisions of the said statutory laws of Tennessee in said Section 4163, sub-section 2 of Shannon's Code as construed and interpreted by the Supreme Court of the State of Tennessee, assumes and seeks: (1) to deprive the plaintiff in error and certain other citizens of the United States and the State of Tennessee of rights, privileges and immunities secured to other citizens of the United States and of said state.

(2) To deprive and deny the plaintiff in error and other citizens of the United States and within

the jurisdiction of the State of Tennessee the equal protection of the law as to the right of inheritance of real property.

(3) To deprive the plaintiff in error and those by, through and under whom he claims the real property in question and other citizens of the United States and of the State of Tennessee, of certain civil rights guaranteed to them by said revised statutes of the United States of 1901 in Sections 1977-78, passed by Congress of the United States to enforce and carry out the provisions of the said 14th amendment of the Federal Constitution and thereby to secure to persons of color-ex-slave, the same civil rights that are enjoyed by free white persons.

SECOND. The court erred in holding that the provisions of the statutes of the State of Tennessee, to effect that free white persons have the right to inherit real property from a brother or sister who dies intestate without issue, while at the same time and under the same conditions persons of color, ex-slaves brothers and sisters, who may die intestate without issue, do not unlawfully discriminate in favor of free white persons as against persons of color who had been in previous condition of servitude and who are ex-slaves, and that said statutes as thus construed and interpreted by the highest court of law and equity in the State of Tennessee, do not violate the 14th amendment to the Constitution of the United States and the Federal statutes hereinbefore referred to and set out.

THIRD. The court erred in holding that said state statutes and law of collateral inheritance according to the construction and interpretation given same by the Supreme Court of the State of Tennessee, and the authority exercised thereunder and thereby authorized to be exercised thereunder, as determined by the said final decision of the said

highest court of the state, does not deprive persons of color who are ex-slaves of certain civil rights as to real property and the inheritance of same, although said rights are at the same time conferred, granted and given to free white persons and denied to ex-slaves, colored persons; and that in so holding or construing said state statutes there is no violation of said Sections 1977-78 of the said revised statutes of the United State of 1901 and the 14th amendment of the Constitution of the United States, for the enforcement of which said acts of Congress were enacted.

FOURTH: That the court in holding that by the interpretation placed upon Section 4163, subsection 2, of Shannon's compilation of the statutory laws of the State of Tennessee, by the Supreme Court of the State of Tennessee, is not contrary to and in violation of and in contravention of the rights claimed under and by virtue of the said revised statutes of the United States as found in Section 1977-78, and also not in violation of the laws and Constitution of the United States and especially of the 14th amendment thereof. Plaintiff in error says that in the aforesaid suit proceedings and final adjudication there was drawn in question and necessarily involved what is called the Civil Rights Act, passed by the Congress of the United States, compiled in Sections 1977-78 of the United States compiled statutes of 1901, since by the said final judgment of said Supreme Court of the State of Tennessee it was held that under and by virtue of the laws of the State of Tennessee, in substance and effect, while free (white) persons can and do inherit real property collaterally, as next of kin, that persons of color, who are ex-slaves, can not and do not have any such right conferred upon them as such under the laws of the State of Tennessee, and hence the said decision and final judgment of said Supreme

> Court of the State of Tennessee is adverse to said Federal statutes of the United States aforesaid, which said Federal statutes provide among other things that all citizens of the United States shall have the same rights in every state as are enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property. To which said decision the plaintiff in error hereby excepts and assigns the same in error."

Now then, the simple question involved in this law suit is, did the Supreme Court of the State of Tennessee commit error in holding that collateral ex-slaves have no transmissible blood? It is conceded on page 9 of the brief of plaintiff in error, that under the statutes of the State of Tennessee, ex-slaves can inherit: but under the construction placed upon these statutes, brothers and sisters of ex-slaves can not inherit from each other. It is not contended, however, that their children can not inherit from their parents, and that husband and wife can not inherit from each other

By examining the various statutes of Tennessee as appear (Rec. 35), it will be seen that ample provision has been made for the purpose of guaranteeing to this class of persons, by the State Government, every right guaranteed to them by the Federal Government. Secs. 1-2-5, Chap. 40, Acts 1865-66.

It appears that the legislature of the State of Tennessee has fully complied with the requirements of the 14th amendment to the Constitution of the United States and of Sections 1977 and 1978, by the enactment of appropriate statutes.

The 14th amendment and Sections 1977 and 1978 of the revised statutes of the United States do not control in this case, because the right claimed here is a right subject to State legislation and decisions.

In the case of *Paul* v. *Virginia*, 8 Wall. 180, 19 L. ed. 360, the court in expounding this clause of the Constitution says that "the privileges and immunities secured to citizens of each state in the several states, by the provision in question, are those privileges and immunities which are common to the citizens of the latter states under their constitution and laws by virtue of their being citizens."

The 14th amendment and Sections 1977 and 1978 were construed in a later case in which the court said:

> "The constitutional provisions there alluded to did not create those rights which it called privileges and immunities of citizens of states. It threw around them in that clause, no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the State Government over the rights of its own citizens."
>
> Slaughter-House cases, 16 Wall. 36.

Continuing in the same case, the court said:

> "Its sole purpose was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same neither more nor less shall be the measure of the rights of citizens of other states within your jurisdiction."

The authorities submitted in the Brief of the plaintiff in error relate to questions involving political rights, and no question of inheritance or right of property was involved in any of them, as we understand them.

It is not shown in this case that the plaintiff in error, nor those through whom he claims, has been discriminated against because of his color, or because he was an ex-slave, he simply belongs to a class of persons and is treated like all other persons similarly situated.

> "The Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed."
>
> *Hodges* v. *United States*, 203 U. S. 1.
> *Field* v. *Barber Asphalt Paving Co.*, 194 U. S. 618.
> *Duncan* v. *Missouri*, 152 U. S. 377.

Plaintiff in error has not established the fact that he has been deprived of any right in this case. The only right claimed, is the right to inherit, and that is not a natural right. Will Jones, the plaintiff in error, is not claiming for himself the right of inheritance, but he is claiming for another.

Before the Act of the Legislature of Tennessee, passed in 1865 and 1866, slaves in Tennessee could not inherit at all, and it so remained until the passage of the above act.

Scott v. *Sanford*, 19 How. 393.

Construction of Statutes.

Since it is conceded that the real question involved is one of construction of the statutes of the State of Tennessee put upon them by the highest court of the state in which a decision can be had, we will consider the case under that head.

Chapter 40 of the Acts of 1865-6, Section 5, of the Legislature of the State of Tennessee is the statute involved in this case, and reads as follows:

> "Section 5. Be it further enacted that all free persons of color who were living together as man and wife in this state, while in a state of slavery, are hereby declared to be man and wife, and their children legitimately entitled to an inheritance in any property heretofore acquired or that may hereafter be acquired by said parents, to as full an extent as the children of white citizens are now entitled, by the existing laws of this state." Rec. 35.

The Supreme Court of the State of Tennessee in construing this Section in February 1871, put the construction upon it that has been upheld ever since by the courts of Tennessee.

Andrews v. *Page*, 3 Heisk. 668.

A similar Act was passed for the purpose of making valid marriages between white persons who had married under license carelessly issued in blank by the clerk and containing nothing beyond their own signatures. See Acts 1849 p. 397.

Again, in April, 1897, the Supreme Court of Tennessee in the case of *Shepherd* v. *Carlin*, 99 Tenn. 64, con-

strued the Act of 1865-66 speaking through Mr. Justice Wilks, the court said:

> "We are of opinion that, by the plain terms of the Act, the right and power of inheritance is conferred only as to such property as may descend from parents, and that no right of collateral inheritance is conferred by the Act. This was no doubt the intention of the General Assembly and is the clear meaning of the words of the Act, which can admit of no other construction. A like construction has been placed upon statutes similar to the Act of 1865-66 in other States. *Tucker* v. *Bellamy*, 98 N. C. 31; *Jones* v. *Haggard*, 108 N. C. 178; *Williams* v. *Kimball*, 16 S. Rep. 783-786."

Shepherd v. *Carlin* was reaffirmed in the cases of *Laughlin* v. *Johnson*, 102 Tenn. 460; *Dennin* v. *Dennis*, 105 Tenn. 86; *Carver* v. *Maxwell*, 110 Tenn. 75.

The foregoing decisions have established a rule of property which has been the law in Tennessee since 1871, and has been relied upon as the settled law upon the subject of collateral inheritance between ex-slaves ever since.

Claim of Defendants in Error.

The courts of the State of Tennessee had the right to say which of its citizens should inherit the lands of another citizen dying intestate and leaving lands. Defendant in error claimed the property in question under the following statute of Tennessee:

> "If the intestate died leaving no heirs at law, capable of inheriting the real estate, it shall be inherited by the husband or wife in fee simple; Acts 1849 Chap. 54 Sec. 1." Sec. 4165 Shannon's Code.

The alleged brothers and sisters of John Jones never had the right of inheritance in the property involved in this case, hence, neither they nor plaintiff in error have been deprived of any right.

Bates v. *Brown*, 5 Wall 710.
Stephens v. *Sullivant*, 5 Wheat. 207.

> "In *Dawson* v. *Godfrey*, 4 Cranch 321, it was said that the right to inherit was not a natural and perfect right, but has its origin and is modified to infinity by the laws of society."

And in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283 the court said:

> "That one of the principles upon which were based the authorities for upholding the constitutionality of inheritance taxes was that the right to take property by devise or descent is a creature of law and not a natural right—a privilege."
>
> "In *Wallace* v. *Meyers*, 4 L. R. A. 171, 38 Fed. 184, it was said to be lawful for the state to withhold altogether the privilege of acquiring property within its domain by will or inheritance."
>
> "The court considered it elementary law that the right of inheritance was entirely a matter of statutory enactment and within the control of the legislature, and that it was only by virtue of statute that an heir was entitled to receive any of his ancestors' estate." 126 Cal. 112, 45 L. R. A. 788.

The principle was upheld in the following cases:

Knowelton v. *Moore*, 178 U. S. 41.
Plumer v. *Coler*, 178 U. S. 115.
Hutchins In. Co. v. *Caldwell*, 152 U. S. 65.

Effect of State Legislations and Decisions.

The plaintiff in error has failed to establish the fact that he has been denied any right to which he was entitled under the Constitution and Laws of the United States. The case ought to be affirmed. The question involved being purely one of State Statutes and Decisions, he ought not to recover in this case; it is without merit in this court.

The Federal Courts have established a rule followed by a long line of decisions, upholding the decisions of the highest court in a state in matters of inheritance and title to land made in accordance with the laws of the locality in which the land is situated.

> "Where any principle of law establishing a rule of real property is settled in the State Courts, the same rule will be applied by the Federal Courts in the same or analogous cases.
>
> *Cope* v. *Cope*, 137 U. S. 137.
> *Williamson* v. *Suydam*, 6 Wall 733.
> *Suydam* v. *Williamson*, 24 How. 427.
> *Bondurant* v. *Watson*, 103 U. S. 281.
> *Beauregard* v. *New Orleans*, 18 How. 497."

> "In construing a State Statute on which land titles depend, the construction of the highest court of the state will be followed by courts of the United States."
>
> *McKeen* v. *Delany*, 5 Cranch 22.
> *Massie* v. *Watts*, 6 Cranch 398.
> *Thatcher* v. *Powell*, 6 Wheat. 119.
> *Webster* v. *Cooper*, 14 How. 488.

This question seems to have been settled by a line of decisions, dating almost back to the origin of the

court. Some of the latest decisions are as follows, in which the court said:

> "The Supreme Court of the United States follows the decisions of the highest Court of the State in regard to the title to real estate and the construction of deeds and statutes in respect thereto."
>
> *Halstead* v. *Buster*, 140 U. S. 273.
> *Ridings* v. *Johnson*, 128 U. S. 212.
> *Gormley* v. *Clark*, 134 U. S. 338.
> *McElvain* v. *Brush*, 142 U. S. 155.

Questions of Descent.

Nothing is better settled than the proposition that questions of descent are to be determined by local law.

> *Levy* v. *McCartee*, 6 Pet. 102.
> *Cope* v. *Cope*, 137 U. S. 137.

> "The Federal Courts will follow the decisions of the state courts in cases arising under the statutes of descent of the state where the land lies."
>
> *Gardner* v. *Collins*, 2 Pet. 58.

> "Whether or not first cousins take the estate of a decedent to the exclusion of second cousins is a question of local law on which the decisions of the state court are binding upon a Federal Court."
>
> *Maxwell* v. *Moore*, 22 How. 185.

Discrimination.

The plaintiff in error pleads unjust discrimination, or that the brothers and sisters of John Jones have been discriminated against by the decisions of the courts of Tennessee; the brothers and sisters are not here making

this claim; he is making it for them; they are content, although according to the record, this claim is fraudulent. Rec. 23. Will Jones does not come into this court with clean hands; the bill charges him with procuring the deeds under which he claims through fraud, the proof in the case sustains the charge; and he never took a word of evidence to contradict this charge.

Nothing is better settled than that the claim of a denial of a right, title or immunity under the constitution and laws of the United States must be made by the person entitled thereto.

> "Section 1 of the 14th Amendment providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, imparts that no person or class of persons shall be deprived of legal protection which similar persons or classes under like circumstances enjoy." *Apex Transportation Co.* v. *Garbode*, 32 Oregon 582. *"It simply declares that all persons alike should enjoy such legal rights as were already established in the several states; it did not create any new legal rights."*
>
> *Ward* v. *Flood*, 48 Cal. 36.
> Railroad Tax Cases, 8 Sway. (U. S.) 238.

The plaintiff in error claims through the alleged brothers and sisters of John Jones, deceased, they were ex-slaves, they belonged to a class, and all ex-slaves in Tennessee, whether white or black, are subjected to the same rules and decisions by the courts. It is made a question of class or status not color. The state has the right through legislation and judicial interpretation to declare the social status of its citizens, and these persons

belong to a class whether white or black. Will Jones has had his case tried in the courts of the state of which he is a citizen, and has been treated as other persons belonging to the class through which he claims.

> "Equal protection of the law is not denied by a law or cause of procedure which would have been applied to any other persons in the state under similar circumstances and conditions."
>
> *Tinsley* v. *Anderson*, 171 U. S. 305.
>
> "Whenever the law operates alike upon all persons and property similarly situated, equal protection can not be said to be denied."
>
> *Walston* v. *Nevin*, 128 U. S. 578.
> *Astor* v. *Schlitze Brewing Co.*, 164 Tenn. 732.

The plaintiff in error is a citizen of the state of Tennessee. The provision of the Constitution under which he claims applied to citizens of the United States and not to citizens of a state; citizens of the United States are not citizens of a state, in the meaning of the 14th Amendment.

Slaughter-House case, 16 Wall. 36.

The plaintiff in error claims that the action of the Supreme Court of the State of Tennessee in entering a decree against him in this case abridged his rights, privileges and immunities as a citizen of the United States, or denied to him the equal protection of the law.

The rights of citizens of the United States are not the rights of citizens of states, but those political and civil rights guaranteed by the Constitution of the United States. Even the right of suffrage was not one of them

under the original Constitution; the right to hold office is not one of them. A citizen of one state has no right to vote in another; if it was a right which belonged to him as a citizen of the United States, then his right to vote in a state could not be denied by the state, or delayed even for a time. The right was conferred and regulated by state law; and the Constitution gave no power to Congress over that subject, but expressly made even the right to vote for members of Congress dependent upon the qualification of electors of the most numerous branch of the state legislature.

The right to inherit is not higher than any of these rights.

A man as a citizen of the United States can not hold any office in a state, his qualifications are denied by state laws. A citizen of the United States as such can not even be president of the United States; the only persons who are peculiarly citizens of the United States as distinguished from citizens of states being naturalized foreigners. The president must be a citizen of a state and a native.

The privileges of a citizen of the United States affect him in his foreign relations and in his constitutional guarantees under the Constitution of the United States against bills of attainder, *ex post facto* laws, and laws impairing the obligations of contracts.

The plaintiff in error as a citizen of the State of Tennessee, complaining of a decree of the highest court of that state, can not invoke the aid of the 14th amendment, nor of the statutes enacted in aid thereof, where

his claim is limited to that of a citizen of a state, and not a citizen of the United States; for no such right is reserved by the Constitution.

The powers, delegated to the United States and those prohibited by it to the states, are ascertained and defined by the terms of the Constitution itself. The powers reserved to the several states will extend to all objects which in the ordinary course of affairs concern the lives, liberties and properties of the people, and the internal order, improvement and prosperity of the state.

The plaintiff in error in this case has not brought himself within the scope of the 14th Amendment of the Constitution of the United States as set forth in Article 1 thereof, nor has he brought himself within the scope of Sections 1977 and 1978 of the Revised Statutes of the United States which were enacted in aid of the 14th amendment.

His case raises no question for adjudication by the Federal Supreme Court; and he is not entitled to any relief in this case.

Thus having failed to present a question for determination by this court,

The decree of the Supreme Court of the State of Tennessee should be affirmed.

Respectfully submitted,

B. F. Booth,
Counsel for Defendants in Error.